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Acting Under Authority Conferred By 28 U.S.C. § 515

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Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ELIZABETH HOLMES and RAMESH  
“SUNNY” BALWANI,  
  
Defendants.

) Case No. 18-CR-00258 EJD  
)  
) SEPTEMBER 18, 2020 DECLARATION OF  
) AUSA ROBERT S. LEACH IN SUPPORT OF  
) UNITED STATES’ OPPOSITION TO  
) DEFENDANTS’ MOTION TO DISMISS  
) SECOND AND THIRD SUPERSEDING  
) INDICTMENTS BASED ON PRE-  
) INDICTMENT DELAY  
)  
) Date: October 6, 2020  
) Time: 10:00 a.m.  
) Court: Hon. Edward J. Davila  
)  
) **REDACTED VERSION**  
)  
)

I, Robert S. Leach, declare as follows:

1. I am an Assistant United States Attorney with the United States Attorney’s Office for the Northern District of California (“USAO”). I am one of the prosecutors assigned to this matter and have been since 2016. I make this declaration in support of the United States’ Opposition to Defendants’ Motion to Dismiss Second and Third Superseding Indictments Based on Pre-Indictment Delay.

2. Attached as Exhibit A is a true and correct copy of the transcript of a hearing in this matter on April 22, 2019.

3. Attached as Exhibit B is a true and correct copy of portions of the transcript of a hearing in this matter on June 28, 2019.

4. Attached as Exhibit C is a true and correct copy of [REDACTED]

[REDACTED].

5. Attached as Exhibit D is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED].

6. Attached as Exhibit E is a true and correct copy of the transcript of a hearing in this matter on April 15, 2020.

7. Attached as Exhibit F is a true and correct copy of portions of the transcript of a hearing in this matter on July 20, 2020.

8. Attached as Exhibit G is a true and correct copy of a document Bates numbered SEC-EPROD-000356416 produced in discovery in this case. The document appears to be an email from Don Lucas' son on or about September 22, 2013 stating: "my dad was Chairman of [Theranos] until his Alzheimer's." Personal identifying information is redacted.

9. The government produced evidence it had gathered from Walgreens, Safeway, and Theranos board members in its initial productions in August 2018 and October 2018. To give just a few examples, witness statements from at least two Walgreens witnesses (Jay Rosan and Nimesh Javeri); Safeway's CEO, and three Theranos board members and documents Bates numbered WAG-TH-DOJ and SWYDOJ were included in the government's initial productions.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of September 2020.

*/s/ Robert S. Leach*

ROBERT S. LEACH  
Assistant United States Attorney

# EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-18-00258-EJD &  
) CV-18-01603-EJD  
PLAINTIFF, )  
)  
VS. ) SAN JOSE, CALIFORNIA  
)  
ELIZABETH A. HOLMES AND RAMESH ) APRIL 22, 2019  
SUNNY BALWANI, )  
) PAGES 1 - 27  
DEFENDANTS. )  
\_\_\_\_\_)  
)  
SECURITIES AND EXCHANGE )  
COMMISSION, )  
)  
PLAINTIFF, )  
)  
VS. )  
)  
RAMESH SUNNY BALWANI, )  
)  
DEFENDANTS. )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN BOSTIC  
ROBERT LEACH  
JEFFREY SCHENK  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113  
  
OFFICIAL COURT REPORTER:  
IRENE L. RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP  
BY: KEVIN M. DOWNEY  
LANCE WADE  
725 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE  
BY: JOHN D. CLINE  
ONE EMBARCADERO CENTER, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94111

FOR DEFENDANT BALWANI: DAVIS, WRIGHT & TREMAINE LLP  
BY: JEFFREY COOPERSMITH  
STEPHEN CAZARES  
KELLY M. GORTON  
505 MONTGOMERY STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94111

FOR THE S.E.C.: UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION  
BY: SUSAN F. LAMARCA  
RAHUL KOLHATKAR  
44 MONTGOMERY STREET, SUITE 2600  
SAN FRANCISCO, CALIFORNIA 94104

SAN JOSE, CALIFORNIA

APRIL 22, 2019

P R O C E E D I N G S

(COURT CONVENED AT 1:36 P.M.)

01:36PM 4 THE COURT: WELL, LET'S NOW TURN TO 18-258, UNITED  
01:36PM 5 STATES VERSUS ELIZABETH HOLMES, RAMESH SUNNY BALWANI, AND WE'LL  
01:36PM 6 CALL COMPANION CASE 18-1603, S.E.C. VERSUS BALWANI.

01:36PM 7 IF THOSE PARTIES COULD COME FORWARD, PLEASE.

01:36PM 8 MR. BOSTIC: GOOD AFTERNOON, YOUR HONOR.  
01:36PM 9 JOHN BOSTIC, JEFF SCHENK, AND BOB LEACH FOR THE UNITED STATES.

01:36PM 10 THE COURT: GOOD AFTERNOON. LET ME CAPTURE YOUR  
01:37PM 11 COLLEAGUES.

01:37PM 12 MS. LAMARCA: SUSAN LAMARCA AND RAHUL KOLHATKAR FOR  
01:37PM 13 THE S.E.C.

01:37PM 14 THE COURT: THANK YOU.

01:37PM 15 MR. DOWNEY: GOOD AFTERNOON, YOUR HONOR.  
01:37PM 16 KEVIN DOWNEY AND LANCE WADE FOR ELIZABETH HOLMES WHO'S PRESENT  
01:37PM 17 IN COURT AS WELL.

01:37PM 18 THE COURT: THANK YOU. GOOD AFTERNOON.

01:37PM 19 MR. COOPERSMITH: GOOD AFTERNOON, YOUR HONOR.  
01:37PM 20 JEFF COOPERSMITH FOR RAMESH BALWANI WHO IS TO MY RIGHT AND ALSO  
01:37PM 21 KELLY GORTON AND STEVE CAZARES FROM MY OFFICE.

01:37PM 22 THE COURT: GOOD AFTERNOON. THIS IS ON FOR FURTHER  
01:37PM 23 STATUS. I HAVE READ AND REVIEWED YOUR DOCUMENT 66, AND WE'RE  
01:37PM 24 CALLING THE CRIMINAL CASE FIRST, AND THEN WE'LL TURN TO THE  
01:37PM 25 S.E.C. CASE IN JUST A MOMENT.

01:37PM 1 I HAVE READ THE JOINT MEMORANDUM. THANK YOU FOR THAT.

01:37PM 2 I SUPPOSE I SHOULD GET UPDATED FROM COUNSEL. IT LOOKS  
01:37PM 3 LIKE THERE'S PROBABLY TWO MOTIONS THAT WILL BE PENDING IF NOT  
01:37PM 4 PENDING CURRENTLY, AND I'D LIKE TO DISCUSS THAT. I HAD SOME  
01:37PM 5 THOUGHTS ALSO ABOUT TRIAL DATES, AND WE SHOULD PROBABLY BE  
01:37PM 6 THINKING ABOUT AND LOOKING AT TRIAL DATES ONGOING.

01:37PM 7 SO, COUNSEL, WHO WOULD LIKE TO GO FIRST? MR. BOSTIC.

01:38PM 8 MR. BOSTIC: SO, YOUR HONOR, ON THE TWO PENDING  
01:38PM 9 MOTIONS MY COLLEAGUE, MR. LEACH, WILL ADDRESS THE MOTION TO  
01:38PM 10 STAY WHEN WE DISCUSS THAT.

01:38PM 11 ON DEFENDANTS' MOTION TO COMPEL DISCOVERY PRODUCTION FROM  
01:38PM 12 THE GOVERNMENT, AS THE COURT KNOWS FROM THE JOINT STATUS  
01:38PM 13 SUBMISSION, THE GOVERNMENT HAS PRODUCED APPROXIMATELY 20  
01:38PM 14 MILLION PAGES ALREADY. THE ADDITIONAL CATEGORIES OF DOCUMENTS  
01:38PM 15 ADDRESSED IN THE PENDING MOTION ARE MOSTLY HELD IN THE HANDS OF  
01:38PM 16 GOVERNMENT AGENCIES LIKE THE FDA AND THE CMS.

01:38PM 17 IN ORDER TO RESPOND TO THAT MOTION, THE GOVERNMENT  
01:38PM 18 BELIEVES THAT IT NEEDS TO COLLECT SOME ADDITIONAL INFORMATION  
01:38PM 19 FROM THOSE AGENCIES.

01:38PM 20 I INFORMED COUNSEL FOR MS. HOLMES JUST BEFORE THIS HEARING  
01:38PM 21 THAT THE LAWYERS THAT I'VE BEEN DEALING WITH AT CMS AND FDA ARE  
01:38PM 22 OUT OF TOWN OR RECENTLY OUT OF TOWN AND I BELIEVE OUT OF THE  
01:38PM 23 COUNTRY.

01:38PM 24 ONE REPRESENTING CMS RETURNS FROM BEING ON LEAVE I BELIEVE  
01:38PM 25 ON MAY 1ST OR 2ND. I THINK IN ORDER TO PRESENT THE COURT WITH

01:39PM 1 THE FACTS THAT IT NEEDS TO RULE ON THAT MOTION, I DO NEED TO  
01:39PM 2 CONSULT WITH THOSE ATTORNEYS. THE GOVERNMENT COUNSEL IN THIS  
01:39PM 3 CASE DOES NOT REPRESENT THOSE AGENCIES AND WILL NOT REPRESENT  
01:39PM 4 THOSE AGENCIES FOR PURPOSES OF THIS CASE. SO IN ORDER TO GET  
01:39PM 5 THAT INFORMATION FOR THE COURT, I WOULD LIKE A CHANCE TO  
01:39PM 6 CONSULT WITH THOSE LAWYERS. SO I WOULD JUST ASK THAT IN  
01:39PM 7 SETTING A BRIEFING AND HEARING SCHEDULE FOR THAT MOTION WE  
01:39PM 8 ACCOUNT FOR THAT.

01:39PM 9 THE COURT: OKAY. HAVE YOU MET AND CONFERRED ABOUT  
01:39PM 10 THAT?

01:39PM 11 MR. DOWNEY: YOUR HONOR, WE DISCUSSED IT. OUR  
01:39PM 12 REFLECTION ON MR. BOSTIC'S REQUEST WAS OF COURSE WE WANT TO  
01:39PM 13 ACCOMMODATE HIM UNDERTAKING A REASONABLE PROCESS SO THE MOTION  
01:39PM 14 CAN BE BRIEFED.

01:39PM 15 WE'RE CONCERNED ABOUT THE PACE OF THE PRODUCTION OF  
01:39PM 16 DISCOVERY. THERE'S NO --

01:39PM 17 THE COURT: IT'S ONLY MILLIONS OF PAGES.

01:39PM 18 MR. DOWNEY: YEAH, MILLIONS OF PAGES HAVE ALREADY  
01:39PM 19 BEEN PRODUCED. I GATHER MILLIONS MORE ARE TO BE PRODUCED.

01:39PM 20 SO WE DON'T OPPOSE THAT. WE JUST -- IN THE CONTEXT OF A  
01:39PM 21 BROADER DISCUSSION ABOUT WHEN IT'S REALISTIC TO SET A TRIAL  
01:39PM 22 DATE.

01:39PM 23 THE COURT: SURE.

01:39PM 24 MR. DOWNEY: SO ASSUMING THAT WE HAVE, YOU KNOW, AN  
01:40PM 25 OPPORTUNITY, IF WE PREVAIL ON THE MOTION, AN ADEQUATE



01:40PM 1 OPPORTUNITY TO REVIEW WHATEVER IS PRODUCED, THAT'S FINE WITH  
01:40PM 2 US. WE'RE JUST CONCERNED BECAUSE THE AMOUNT OF TIME, LEAD TIME  
01:40PM 3 THAT THE GOVERNMENT PROPOSED IN THE JOINT STATUS MEMORANDUM  
01:40PM 4 SOUNDS LIKE A FAIR AMOUNT OF TIME, BUT GIVEN THE VOLUME OF  
01:40PM 5 MATERIAL IT'S REALLY NOT.

01:40PM 6 SO OUR CONCERN ABOUT THAT IS NOT ACCOMMODATING MR. BOSTIC,  
01:40PM 7 WHICH WE'RE HAPPY TO DO, IT'S JUST ABOUT THE BROADER SET OF  
01:40PM 8 ISSUES.

01:40PM 9 THE COURT: SURE. WELL, THANK YOU.

01:40PM 10 MY SENSE, AND IT'S PROBABLY YOUR EXPERIENCE ALSO, WITH  
01:40PM 11 THESE TYPES OF MOTIONS TYPICALLY THERE'S ADDITIONAL MEET AND  
01:40PM 12 CONFERES. SOMETIMES THERE'S RESOLUTION REGARDING WHAT CAN BE  
01:40PM 13 OBTAINED AND WHAT IS OBTAINED. SOMETIMES THE INFORMATION, WHEN  
01:40PM 14 THE GOVERNMENT IS IN THEIR SITUATION THAT THEY'RE IN NOW, WHEN  
01:40PM 15 THEY MEET WITH THE OTHER INDIVIDUALS THEY'RE ABLE TO SECURE  
01:40PM 16 ADDITIONAL INFORMATION THAT MIGHT NOT CURE THE ENTIRETY OF THE  
01:40PM 17 DEFECTS AS YOU SEE IT NOW BUT AT LEAST GO A LONG WAY TOWARDS  
01:41PM 18 THAT.

01:41PM 19 MR. BOSTIC AND MR. SCHENK, IF WHAT I'M HEARING IS THAT YOU  
01:41PM 20 NEED TO DISCUSS OR AT LEAST TALK WITH OTHER AGENCIES REGARDING  
01:41PM 21 OTHER DISCOVERY MATTERS THAT MIGHT BE USEFUL TO THAT  
01:41PM 22 CONVERSATION, THAT'S WHAT I'M HEARING, THEN I THINK THAT MAYBE  
01:41PM 23 WE CAN FIND SOME ACCORD WHERE I DON'T KNOW IF WE NEED AN  
01:41PM 24 ADDITIONAL STATUS TO DETERMINE A DATE OR IF I GIVE YOU DATES  
01:41PM 25 NOW. I HATE TO DO THAT NOW AND BLIND THEM NOT KNOWING WHAT IS

01:41PM 1 IN STORE FOR YOUR CONVERSATIONS.

01:41PM 2 MR. BOSTIC: YOUR HONOR, JUST TO BE CLEAR, I THINK  
01:41PM 3 THAT IS PART OF THE OBJECTIVE OF THOSE ADDITIONAL CONVERSATIONS  
01:41PM 4 WITH AGENCY COUNSEL TO SEE WHETHER THERE'S SOME MIDDLE GROUND,  
01:41PM 5 SOME ABILITY TO COMPROMISE.

01:41PM 6 BUT IN ADDITION, I BELIEVE THAT THE DEFENSE MOTION WILL  
01:41PM 7 TURN AT LEAST PARTLY OR IN LARGE PART ON WHETHER THE  
01:41PM 8 GOVERNMENT, WHETHER THE PROSECUTION IS DEEMED TO HAVE ACCESS TO  
01:41PM 9 THE DOCUMENTS IN THE POSSESSION OF THESE AGENCIES.

01:41PM 10 SO IT'S REALLY TO EXPLAIN THOSE RELEVANT FACTS TO THE  
01:42PM 11 COURT TO DETERMINE TO WHAT EXTENT DO WE HAVE ACCESS TO THOSE  
01:42PM 12 DOCUMENTS.

01:42PM 13 THE COURT: SURE. YOU CAN'T HAVE THAT CONVERSATION  
01:42PM 14 UNTIL THE FIRST PART OF MAY IT SOUNDS LIKE.

01:42PM 15 MR. BOSTIC: CORRECT, YOUR HONOR, AT LEAST WE  
01:42PM 16 CANNOT -- AT LEAST AS TO CMS WE CANNOT FINISH THAT CONVERSATION  
01:42PM 17 UNTIL THEN.

01:42PM 18 THE COURT: ALL RIGHT. DO YOU HAVE SUGGESTIONS  
01:42PM 19 ABOUT WHAT WE SHOULD DO?

01:42PM 20 MR. DOWNEY: YOUR HONOR, I THINK MY SUGGESTION WOULD  
01:42PM 21 BE THAT WE FILE AN UPDATE WITH THE COURT PERHAPS AT THE END OF  
01:42PM 22 THE WEEK FOLLOWING THE WEEK WHEN MR. BOSTIC ANTICIPATES THAT  
01:42PM 23 HE'LL HAVE THOSE CONVERSATIONS.

01:42PM 24 MY CONCERN IS ONLY THIS, I ANTICIPATE THAT THE AGENCIES  
01:42PM 25 PROBABLY WILL PRODUCE SOME ADDITIONAL AMOUNT OF MATERIAL. IT'S

01:42PM 1 CLEAR TO US FROM OUR REVIEW OF WHAT HAS BEEN PRODUCED THUS FAR  
01:42PM 2 THAT THERE'S A GOOD BIT OF ADDITIONAL MATERIAL THAT IS PROBABLY  
01:42PM 3 MATERIAL TO OUR PREPARATION AND IN MANY INSTANCES EXCULPATORY.

01:42PM 4 IT MAY BE PREFERABLE ULTIMATELY FOR THE AGENCIES TO  
01:42PM 5 CONDUCT THEIR THOUGHT PROCESS ON THEIR REVIEW RECOGNIZING THAT  
01:42PM 6 THEY'RE GOING TO BE OBLIGATED TO PRODUCE DOCUMENTS WHICH MEET  
01:43PM 7 THOSE STANDARDS.

01:43PM 8 SO I DON'T WANT TO FORESHADOW WHAT THEIR CONSULTATION  
01:43PM 9 PROCESS YIELDS, BUT I THINK WE SHOULD REPORT BACK AT THE END OF  
01:43PM 10 THE WEEK AFTER -- THE WEEK THAT MR. BOSTIC CONSULTS WITH HIS  
01:43PM 11 COLLEAGUES AND OTHER AGENCIES, BUT WE MAY AT THAT TIME FIND  
01:43PM 12 WE'RE NOT MAKING SUFFICIENT PROGRESS, THAT WE WOULD LIKE THE  
01:43PM 13 MOTION TO BE HEARD.

01:43PM 14 BUT I DON'T WANT TO FOREJUDGE THAT, YOUR HONOR. WE CAN  
01:43PM 15 SEE.

01:43PM 16 THE COURT: WELL, THANK YOU. THE ISSUE BEFORE THE  
01:43PM 17 COURT NOW IS TO DETERMINE A BRIEFING SCHEDULE --

01:43PM 18 MR. DOWNEY: YES.

01:43PM 19 THE COURT: -- AS TO WHEN THE GOVERNMENT SHOULD FILE  
01:43PM 20 THEIR REPLY AND OPPOSITION.

01:43PM 21 MR. DOWNEY: UNDERSTOOD. AND I THINK WE CAN DEFER  
01:43PM 22 THE OPPOSITION AT LEAST UNTIL WE FILE THAT MEMORANDUM AND UNTIL  
01:43PM 23 WE FILE THAT JOINT UPDATE.

01:43PM 24 THE COURT: SURE.

01:43PM 25 MR. DOWNEY: AND IF, IN FACT, AT THAT TIME IT'S

01:43PM 1 NECESSARY FOR THE GOVERNMENT TO CONTINUE AND GO AHEAD AND BRIEF  
01:43PM 2 IT, WE'LL DO IT THEN.

01:43PM 3 MR. BOSTIC: YOUR HONOR, NO OBJECTION TO THAT  
01:43PM 4 APPROACH FROM THE GOVERNMENT.

01:43PM 5 THE COURT: OKAY. LET ME ASK, IS THERE ANY  
01:43PM 6 CONNECTION BETWEEN -- LET'S TURN TO THE S.E.C. CASE FOR JUST A  
01:44PM 7 MOMENT.

01:44PM 8 I UNDERSTAND THE GOVERNMENT HAS FILED A MOTION TO  
01:44PM 9 INTERVENE IN THE CRIMINAL CASE. I'M JUST CURIOUS WHETHER  
01:44PM 10 THERE'S SOME CROSS-POLLINIZATION BETWEEN THESE TWO THINGS.

01:44PM 11 MR. LEACH: YES, YOUR HONOR. MR. LEACH FOR THE  
01:44PM 12 GOVERNMENT. I DON'T THINK THERE IS. THE DISCOVERY THAT  
01:44PM 13 MS. HOLMES IS SEEKING ARE DOCUMENTS IN THE POSSESSION OF THE  
01:44PM 14 FDA AND CMS WHICH THE GOVERNMENT CONTENTS ARE NOT PART OF THE  
01:44PM 15 PROSECUTION TEAM AND NOT SUBJECT TO OUR RULE 16 BRADY AND  
01:44PM 16 GIGLIO OBLIGATIONS.

01:44PM 17 THE MOTION TO INTERVENE AND STAY IS REALLY DIRECTED AT  
01:44PM 18 SOME DISCOVERY THAT MR. BALWANI IS ATTEMPTING TO TAKE IN THE  
01:44PM 19 CIVIL CASE RELATING TO DOCTORS AND PATIENTS WHO IN OUR JUDGMENT  
01:44PM 20 HAVE NOTHING TO DO WITH THE S.E.C. CASE BUT EVERYTHING TO DO  
01:44PM 21 WITH THE CRIMINAL CASE.

01:44PM 22 SO WE THINK SOME OF THE RECENT DISCOVERY HAS CROSSED THE  
01:44PM 23 LINE IN TERMS OF RELEVANCE OF THE S.E.C. CASE. WE ALSO TOOK A  
01:44PM 24 LOOK AT THE KEATING FACTORS IN THE MOST RECENT NINTH CIRCUIT  
01:45PM 25 DECISION ON STAYS, AND WE REALLY THINK THAT THE BREADTH OF

01:45PM 1 CIVIL DISCOVERY IN THE S.E.C. CASE IS DISTRACTING FROM THE  
01:45PM 2 PARTIES' ABILITY TO MOVE THE CASE FORWARD AND GET A TRIAL DATE  
01:45PM 3 IN THE CRIMINAL CASE.

01:45PM 4 SO I THINK THOSE ARE -- WE DO NOT TAKE A POSITION ON ANY  
01:45PM 5 DISCOVERY MR. BALWANI HAS TAKEN OF THE FDA OR CMS IN THE S.E.C.  
01:45PM 6 CASE. IT'S REALLY FOCUSSED ON DOCTORS AND PATIENTS AND THE  
01:45PM 7 OVERALL BREADTH OF IT.

01:45PM 8 MR. COPPERSMITH: THANK YOU, YOUR HONOR. WE'RE  
01:45PM 9 GOING TO RESPOND TO THE GOVERNMENT'S MOTION TO INTERVENE AND  
01:45PM 10 STAY. OUR OPPOSITION IS DUE TWO WEEKS FROM THIS PAST FRIDAY SO  
01:45PM 11 WE INTEND TO PUT IN A FULL OPPOSITION. WE DON'T AGREE WITH THE  
01:45PM 12 GOVERNMENT THERE SHOULD BE A MOTION, BUT LET ME SAY A FEW  
01:45PM 13 THINGS IN RESPONSE TO MR. LEACH.

01:45PM 14 THE COURT: SURE.

01:45PM 15 MR. COPPERSMITH: THAT IS, IT'S BEEN ABOUT A YEAR  
01:45PM 16 SINCE THE DISCOVERY COMMENCED IN THE S.E.C. CASE.

01:45PM 17 JUST LIKE IN THE CRIMINAL CASE, THERE ARE MILLIONS OF  
01:45PM 18 PAGES OF DOCUMENTS. AS WE SEE THE S.E.C. CASE, AND WE PUT THIS  
01:46PM 19 IN THE STATUS REPORT FOR YOUR HONOR, WE BELIEVE THERE ARE  
01:46PM 20 ALLEGATIONS ABOUT THE CAPABILITIES OF THERANOS'S LABORATORIES  
01:46PM 21 AND ITS ANALYZER AND IT NOT BEING ACCURATE. WE'VE ACTUALLY  
01:46PM 22 TRIED TO PROPOSE SOME THINGS TO THE S.E.C. WE HAVEN'T HEARD  
01:46PM 23 BACK. WE THINK IT PUTS THESE MATTERS AT ISSUE.

01:46PM 24 THE MATTER WITH RESPECT TO THE HEALTH CARE PROVIDERS,  
01:46PM 25 JUDGE COUSINS IS GOING TO HEAR THAT MOTION ON RELEVANCE ON

01:46PM 1 WEDNESDAY AND JUDGE COUSINS IS GOING TO BE WELL CAPABLE TO  
01:46PM 2 DECIDING WHAT IS RELEVANT IN THE CASE AND WHAT IS NOT, AND WE  
01:46PM 3 THINK IT'S RELEVANT.

01:46PM 4 BUT IN ADDITION, THE FACT THAT THE GOVERNMENT WAITED A  
01:46PM 5 YEAR TO TRY TO STAY AFTER MR. BALWANI PROVIDED DISCOVERY TO THE  
01:46PM 6 S.E.C., HE PROVIDED SWORN INTERROGATORY ANSWERS, HE PROVIDED  
01:46PM 7 OTHER DISCOVERY, SAT FOR THREE DAYS FOR TESTIMONY WITH THE  
01:46PM 8 S.E.C. BEFORE THE COMPLAINT WAS FILED.

01:46PM 9 TO COME IN AND TRY TO STAY AT THIS POINT I THINK IS  
01:46PM 10 TACTICAL, BUT WE'LL EXPLAIN ALL OF OUR --

01:46PM 11 THE COURT: YOU'RE ARGUING THE MOTION.

01:46PM 12 MR. COOPERSMITH: WELL, I MEAN, I'M RESPONDING TO  
01:46PM 13 MR. LEACH.

01:47PM 14 THE COURT: JUNE 10TH, I THINK.

01:47PM 15 MR. COPPERSMITH: YES, YOUR HONOR. AND I DON'T  
01:47PM 16 THINK THAT THAT MOTION SHOULD REALLY AFFECT ANYTHING THAT WE'RE  
01:47PM 17 DOING TODAY NOTWITHSTANDING MR. LEACH'S COMMENTS.

01:47PM 18 SO ONE OTHER THING THAT MAY BE IS PERTINENT AND THAT IS,  
01:47PM 19 THERE IS, AND I THINK WE MENTIONED THIS IN THE STATUS REPORT,  
01:47PM 20 TOO, THERE IS AN ISSUE WITH CMS AND FDA ON THE CIVIL SIDE JUST  
01:47PM 21 LIKE IN THE CRIMINAL CASE AND THERE WERE SUBPOENAS ISSUED TO  
01:47PM 22 THOSE AGENCIES OUT OF THE CIVIL CASE. THE S.E.C. DIDN'T OBJECT  
01:47PM 23 TO ANYTHING ABOUT RELEVANCE ON THOSE UNTIL VERY RECENTLY.  
01:47PM 24 AFTER SEVEN MONTHS THOSE SUBPOENAS WERE PENDING.

01:47PM 25 WE'VE BEEN CONFERRING, MEETING AND CONFERRING WITH CMS AND

01:47PM 1 FDA AND DOJ COUNSEL WHO REPRESENTS THOSE AGENCIES FOR MANY,  
01:47PM 2 MANY MONTHS. WE'RE TRYING TO FRAME THOSE ISSUES FOR THE COURT  
01:47PM 3 IF WE CAN'T RESOLVE THEM. OBVIOUSLY, WE HOPE WE CAN RESOLVE  
01:47PM 4 THEM. BUT THAT'S SOMETHING THAT WE'VE BEEN STRUGGLING WITH  
01:47PM 5 FOR -- YOU KNOW, SINCE SEPTEMBER SINCE WE ISSUED THOSE  
01:47PM 6 SUBPOENAS IS TO ACTUALLY GET THOSE AGENCIES TO PROVIDE  
01:47PM 7 DOCUMENTS.

01:48PM 8 THAT IS WHAT IS GOING ON.

01:48PM 9 THE COURT: OKAY. THANK YOU. ANYTHING FURTHER THEN  
01:48PM 10 ON THAT? SHOULD WE LEAVE THE JUNE 10TH DATE THEN? IS THAT  
01:48PM 11 CONVENIENT?

01:48PM 12 MR. COOPERSMITH: THAT WAS THE DATE AVAILABLE FOR  
01:48PM 13 US, SO, YES, YOUR HONOR.

01:48PM 14 MR. LEACH: IT'S CONVENIENT FOR US, YOUR HONOR, IF  
01:48PM 15 THE COURT IS AVAILABLE TO GO FORWARD.

01:48PM 16 THE COURT: I THINK THAT'S AT 10:00 A.M.

01:48PM 17 THE CLERK: YES, YOUR HONOR.

01:48PM 18 THE COURT: LET'S LEAVE THAT SET. LET'S RETURN NOW  
01:48PM 19 TO THE CRIMINAL CASE.

01:48PM 20 WHAT DO YOU SUGGEST THEN? I UNDERSTAND YOU'LL PERHAPS  
01:48PM 21 PROVIDE A MEMO PERHAPS THE WEEK AFTER, MAYBE IT'S THE SECOND  
01:48PM 22 WEEK OF MAY OR SOMETHING LIKE THAT, MR. BOSTIC.

01:48PM 23 MR. BOSTIC: THAT'S WHAT I UNDERSTAND FROM DEFENSE'S  
01:48PM 24 PROPOSAL, YOUR HONOR, AND THAT MEMO WOULD EITHER SAY THE  
01:48PM 25 PARTIES HAVE REACHED THE FOLLOWING AGREEMENT OR ARE MAKING

01:48PM 1 PROGRESS TOWARDS REACHING THIS AGREEMENT OR IT WOULD INDICATE  
01:48PM 2 THAT THERE IS NO SUCH AGREEMENT AND THAT THE GOVERNMENT IS  
01:48PM 3 PLANNING TO FILE ITS OPPOSITION. THEN MY HOPE AT THAT TIME  
01:48PM 4 WOULD BE THAT THE PARTIES INCLUDE IN THAT FILING A PROPOSED  
01:48PM 5 BRIEFING AND HEARING SCHEDULE.

01:49PM 6 IS THAT YOUR UNDERSTANDING?

01:49PM 7 MR. DOWNEY: THAT'S MY UNDERSTANDING, TOO.

01:49PM 8 THE COURT: I'LL GIVE YOU AN OPPORTUNITY AND THE  
01:49PM 9 OPPORTUNITY TO CREATE SUCH A SCHEDULE THAT COMPORTS WITH YOUR  
01:49PM 10 CALENDARS. I'M HAPPY TO GIVE THAT TO YOU FOR SUGGESTION TO THE  
01:49PM 11 COURT, AND IF WE CAN ACCOMMODATE IT, WE WILL. I'LL ACCEPT THAT  
01:49PM 12 FOR YOU.

01:49PM 13 LET'S TALK ABOUT TRIAL FOR JUST A MOMENT. I REALIZE THAT  
01:49PM 14 IT'S GOING TO BE PREMATURE BASED ON THESE PENDING MOTIONS. BUT  
01:49PM 15 WHAT ARE YOUR THOUGHTS, IF YOU HAVE ANY, ABOUT WHEN THE CASE  
01:49PM 16 WOULD PROCEED TO TRIAL, IF IT WERE TO PROCEED TO TRIAL, WHEN  
01:49PM 17 THAT MIGHT BE?

01:49PM 18 MR. DOWNEY: I THINK FROM THE DEFENSE PERSPECTIVE AT  
01:49PM 19 THIS POINT, JUDGE, WE'RE ABOUT THREE MONTHS TOO EARLY TO  
01:49PM 20 DISCUSS THAT.

01:49PM 21 IN ADDITION TO WHAT WE'VE JUST DISCUSSED, THERE ARE A  
01:49PM 22 COUPLE OF OTHER STRANDS THAT ARE GOING TO DEFINE, I THINK, THE  
01:49PM 23 SCOPE OF WHAT IS AT ISSUE.

01:49PM 24 ONE IS THAT THERE IS A TAINT TEAM THAT IS IN PLACE FOR  
01:49PM 25 PURPOSES OF REVIEW OF CERTAIN DOCUMENTS, AND THERE'S A



01:49PM 1 PROCEDURE THAT ATTACHES TO THE BACK END OF THAT WHERE THE  
01:50PM 2 DEFENSE CAN OBJECT IF DOCUMENTS ARE TO BE DISCLOSED TO THE  
01:50PM 3 GOVERNMENT.

01:50PM 4 THE DOCUMENTS THAT ARE AT ISSUE THERE I THINK ARE GOING TO  
01:50PM 5 BE QUITE MATERIAL TO THE CASE, AND WE DON'T AT THIS POINT KNOW  
01:50PM 6 WHAT THE STATUS IS OF THAT REVIEW, WHEN WE'LL GET THOSE  
01:50PM 7 DOCUMENTS, ET CETERA, BUT I THINK THAT IS A PROCESS THAT THE  
01:50PM 8 GOVERNMENT HAS SAID HAS COMMENCED AND WE WILL, I THINK,  
01:50PM 9 PRESUMABLY BE IN THAT PROCESS THREE MONTHS FROM NOW AND HAVE A  
01:50PM 10 BETTER SENSE WITH CLARITY AS TO WHEN WOULD BE AN APPROPRIATE  
01:50PM 11 TRIAL DATE.

01:50PM 12 THE OTHER PIECE OF IT, WHICH I JUST, FRANKLY, HAVE TO SOME  
01:50PM 13 EXTENT THROW MY HANDS UP ON, JUDGE, AND SAY WE HAVE A HUGE  
01:50PM 14 AMOUNT OF MATERIAL THAT HAS ALREADY BEEN PRODUCED WHICH I THINK  
01:50PM 15 THE GOVERNMENT HAS WORKED DILIGENTLY TO PRODUCE BUT MUCH OF  
01:50PM 16 WHICH WE HAVE ONLY RECENTLY GOTTEN. WE'RE TOLD BY THE  
01:50PM 17 GOVERNMENT THAT THEY ARE PRODUCING A LARGE ADDITIONAL VOLUME.  
01:50PM 18 INDEED, TODAY MR. BOSTIC HAS UNCOVERED THAT FOUR ADDITIONAL  
01:50PM 19 TERABYTES OF DATA ARE GOING TO BE DISCLOSED TO US. SO WE WANT  
01:51PM 20 TO GET OUR ARMS AROUND WHAT THAT IS, AS DOES HE.

01:51PM 21 SO I THINK WE'RE THREE MONTHS OUT FROM WRAPPING THOSE  
01:51PM 22 STRANDS UP SO THAT WE CAN KNOW WHEN A TRIAL DATE -- WHEN A  
01:51PM 23 RANGE FOR A TRIAL DATE WOULD BE APPROPRIATE AND SUGGEST A LEAD  
01:51PM 24 TIME TO YOUR HONOR.

01:51PM 25 THE COURT: WELL, THAT COMPORTS WITH WHAT YOU'RE

01:51PM 1 SUGGESTING A JULY DATE FOR A STATUS CONFERENCE.

01:51PM 2 MR. DOWNEY: STATUS CONFERENCE, YES.

01:51PM 3 MR. BOSTIC: YOUR HONOR, JUST TO UPDATE THE COURT ON  
01:51PM 4 THE TWO ISSUES JUST MENTIONED BY DEFENSE COUNSEL.

01:51PM 5 FIRST, ON THE TAINT REVIEW, COUNSEL IS CORRECT THAT THAT  
01:51PM 6 PROCESS IS ONGOING. IN FACT, THE GOVERNMENT IS ABOUT TO CLEAR  
01:51PM 7 THE FIRST BATCH OF DOCUMENTS FOR REVIEW BY THE DEFENSE. I  
01:51PM 8 BELIEVE THAT SET OF DOCUMENTS WILL INCLUDE WELL IN EXCESS OF  
01:51PM 9 100,000 OUT OF THE APPROXIMATELY 250,000 DOCUMENTS THAT ARE  
01:51PM 10 UNDERGOING THAT TAINT REVIEW. SO WE'RE MAKING GOOD PROGRESS ON  
01:51PM 11 THAT, AND IT'S MY HOPE THAT VERY SOON THE DEFENSE WILL HAVE  
01:51PM 12 ACCESS TO A VERY LARGE PORTION OF THOSE DOCUMENTS AND THEN  
01:51PM 13 WE'LL PROCEED DILIGENTLY WITH THE REST.

01:51PM 14 AS TO THE NEW INFORMATION, I DID INFORM COUNSEL FOR  
01:52PM 15 MS. HOLMES BEFORE THE HEARING THAT WE RECENTLY OBTAINED  
01:52PM 16 VOLUNTARILY FROM A WITNESS A HARD DRIVE CONTAINING  
01:52PM 17 APPROXIMATELY FOUR TERABYTES OF ADDITIONAL INFORMATION. I  
01:52PM 18 UNDERSTAND THAT MOST OF THAT VOLUME COMES FROM PROMOTIONAL FILM  
01:52PM 19 AND VIDEO CREATED BY THERANOS ITSELF WHEN THE COMPANY WAS  
01:52PM 20 OPERATIONAL. SO I THINK THE LARGE AMOUNT MIGHT BE SOMEWHAT  
01:52PM 21 MISLEADING BECAUSE THESE ARE NOT JUST PAGES OF SOLID DOCUMENTS.  
01:52PM 22 I THINK A LOT OF THAT DATA IS MADE UP BY VIDEO FILES.

01:52PM 23 THE COURT: I SEE. THAT'S HELPFUL.

01:52PM 24 MR. SCHENK?

01:52PM 25 MR. SCHENK: YES, YOUR HONOR. ON THE ISSUE OF

01:52PM 1 SETTING A TRIAL DATE, WE DO THINK IT'S APPROPRIATE TO SET A  
01:52PM 2 TRIAL DATE. WE'RE NOT ASKING THE COURT TO SET A TRIAL DATE IN  
01:52PM 3 THREE MONTHS OR SIX MONTHS, BUT IT DOES HELP CRYSTALIZE MANY OF  
01:52PM 4 THE ISSUES BEFORE THE COURT AND BEFORE THE PARTIES TO HAVE THAT  
01:52PM 5 TRIAL DATE.

01:52PM 6 WE ALSO THINK THAT THE TRIAL WILL BE LENGTHY AND TO  
01:52PM 7 RESERVE THE BLOCK OF TIME ON THE COURT'S CALENDAR AND ON ALL OF  
01:53PM 8 THE PARTIES' CALENDAR AND SO THAT WE CAN SEND TRIAL SUBPOENAS  
01:53PM 9 TO WITNESSES TO BEGIN TO BLOCK OUT TIME. IT'S HELPFUL TO HAVE  
01:53PM 10 A TRIAL DATE.

01:53PM 11 WE THINK THAT TO NOT MEASURE BY COURT WEEKS BUT RATHER  
01:53PM 12 TRIAL DAYS, OUR ESTIMATE AT THIS POINT WOULD BE ABOUT 40 TRIAL  
01:53PM 13 DAYS THOUGH ACKNOWLEDGING WE HOPE THAT WE'RE ABLE TO REACH SOME  
01:53PM 14 STIPULATIONS WITH THE DEFENSE TO ALLEVIATE CUSTODIAL WITNESSES,  
01:53PM 15 AND OBVIOUSLY AS THE TRIAL WOULD GET CLOSER, WE WOULD BE ABLE  
01:53PM 16 TO PROVIDE A MORE ACCURATE OR A BETTER ESTIMATE.

01:53PM 17 BUT AT THIS POINT, YOU KNOW, THAT'S ROUGHLY TWO MONTHS  
01:53PM 18 GOING EVERY COURT DAY SO IT'S PROBABLY GOING TO GO A LITTLE BIT  
01:53PM 19 LONGER THAN THAT AND TO GET TWO MONTHS ON THE COURT'S CALENDAR  
01:53PM 20 IS NOT SOMETHING THAT WE CAN DO ON SHORT NOTICE.

01:53PM 21 SO WE WOULD ASK THE COURT TO THINK ABOUT SETTING US FOR  
01:53PM 22 TRIAL EVEN A YEAR FROM NOW. THE GOVERNMENT'S REQUEST WOULD BE  
01:53PM 23 TO SET THE TRIAL DATE.

01:53PM 24 WE ACKNOWLEDGE THE POINTS THAT THE DEFENSE HAS MADE TO THE  
01:54PM 25 COURT ABOUT THE VOLUMINOUS DISCOVERY AND THEIR NEED TO REVIEW

01:54PM 1 THAT DISCOVERY. A YEAR FROM NOW, THOUGH, WE THINK WOULD  
01:54PM 2 ACCOMPLISH THAT. AND WE SHOULD ALSO NOTE THAT A LOT OF THE  
01:54PM 3 DISCOVERY PRODUCTION IN THIS CASE IS AN EXERCISE IN PROVIDING  
01:54PM 4 THERANOS DOCUMENTS BACK TO THE DEFENSE. NOW IT'S INDIVIDUAL  
01:54PM 5 DEFENDANTS, NOT THE CORPORATION. THERE'S BEEN A LOT OF  
01:54PM 6 LITIGATION THAT HAS PREDATED THE CRIMINAL CASE.

01:54PM 7 SO THEY'VE RECEIVED SOME OF THESE DOCUMENTS AND NOW TWO OR  
01:54PM 8 THREE TIMES FROM US, BUT WE ACKNOWLEDGE THEIR NEED TO  
01:54PM 9 EFFECTIVELY PREPARE BY REVIEWING THESE DOCUMENTS. THEY HAVE  
01:54PM 10 NOT WALKED IN AND ASKED FOR A SPEEDY TRIAL BECAUSE OF THE  
01:54PM 11 VOLUMINOUS NATURE OF THE DISCOVERY.

01:54PM 12 ALTHOUGH IT IS OUR VIEW THAT SETTING A TRIAL DATE NOW IS  
01:54PM 13 IMPORTANT TO CRYSTALLIZE THOSE ISSUES AND TO BLOCK THAT TIME  
01:54PM 14 OUT ON THE COURT'S CALENDAR.

01:54PM 15 AGAIN, EVEN IF IT'S A YEAR FROM NOW WHEN THE COURT HAS THE  
01:54PM 16 TIME TO GIVE US THOSE TWO-PLUS MONTHS, WE WOULD APPRECIATE IT.

01:54PM 17 THE COURT: OKAY.

01:54PM 18 MR. DOWNEY: YOUR HONOR --

01:54PM 19 THE COURT: WELL, LOOKING AHEAD -- I KNOW YOU CAN'T  
01:55PM 20 TELL ME TODAY, COUNSEL, YOU CAN'T TELL ME TODAY WHAT YOUR --  
01:55PM 21 THE TIME YOU NEED FOR YOUR DEFENSE.

01:55PM 22 MR. DOWNEY: NO.

01:55PM 23 THE COURT: BUT MY SENSE IS THAT IT MIGHT MIRROR  
01:55PM 24 THIS AS WELL AND PERHAPS BE LONGER.

01:55PM 25 MR. COOPERSMITH: YES, YOUR HONOR.

01:55PM 1 MR. DOWNEY: THAT'S OUR SENSE, YOUR HONOR, FROM WHAT  
01:55PM 2 THE GOVERNMENT HAS SAID TO US.

01:55PM 3 THE COURT: SO RECOGNIZING THE BUSINESS OF FEDERAL  
01:55PM 4 DISTRICT COURTS IN THIS -- IN THE NORTHERN DISTRICT OF  
01:55PM 5 CALIFORNIA, AND PARTICULARLY THE SAN JOSE DIVISION, IF I CAN  
01:55PM 6 SAY THAT, WE'RE BUSY.

01:55PM 7 MR. DOWNEY: I SEE.

01:55PM 8 THE COURT: IT WOULD MAKE SENSE FOR MY CALENDAR, AND  
01:55PM 9 MY COLLEAGUES AS WELL, TO BLOCK OUT SOME TIME, EXPECTATION SO  
01:55PM 10 THAT WE CAN PROPERLY ADJUST OUR CALENDAR FOR THE OTHER CASES  
01:55PM 11 THAT WE HAVE NEED TO TAKE CARE OF.

01:56PM 12 IS THAT SOMETHING THAT WE CAN DO TODAY?

01:56PM 13 MR. DOWNEY: YOUR HONOR, CAN I MAKE A SUGGESTION?  
01:56PM 14 EVERYTHING THAT MR. SCHENK SAYS IS SENSIBLE. THIS IS GOING TO  
01:56PM 15 BE A LONG TRIAL, AND IT'S GOING TO REQUIRE A LOT OF  
01:56PM 16 COORDINATION, AND I THINK A SIGNIFICANT ADVANCE NOTICE IS  
01:56PM 17 APPROPRIATE.

01:56PM 18 I REALLY DO THINK WHEN THE PROCESSES I'VE IDENTIFIED HAVE  
01:56PM 19 HAD THE OPPORTUNITY TO PLAY OUT, WE'LL BE IN A BETTER POSITION  
01:56PM 20 TO SAY WHETHER THAT'S NINE MONTHS FROM JULY, WHICH WOULD STILL  
01:56PM 21 BE A YEAR FROM TODAY, OR WHETHER IT'S A YEAR FROM JULY. I  
01:56PM 22 THINK THE WORST POSSIBLE RESULT, WHICH WE ALL AGREE ON AND  
01:56PM 23 WHICH I'M SURE THE COURT AGREES ON, IS GETTING CLOSER TO A  
01:56PM 24 TRIAL AND UNEXPECTED EVENTS THAT CHANGE THE TRIAL DATE.

01:56PM 25 SO I WILL COMMIT TO THE COURT THAT WE WILL TRY TO GIVE A

01:56PM 1 RELIABLE TRIAL DATE AS I'M SURE THE GOVERNMENT WILL WHEN WE  
01:56PM 2 PROPOSE ONE. BUT MY SUGGESTION WOULD BE THAT WE CONFER IN  
01:56PM 3 ADVANCE OF A JULY CONFERENCE, COME UP WITH A PROPOSED SCHEDULE,  
01:56PM 4 ASSUMING THE ISSUES THAT WE'VE IDENTIFIED ARE RESOLVED AND  
01:57PM 5 KNOWABLE AT THAT POINT, AND COME BACK AT THAT TIME AND TRY TO  
01:57PM 6 IDENTIFY WHAT THE APPROPRIATE LENGTH OF TIME IS AND WHAT THE  
01:57PM 7 APPROPRIATE PRECISE SCHEDULING IS SO THAT WHEN THE COURT  
01:57PM 8 SCHEDULES THOSE DATES IT CAN HAVE CONFIDENCE IN THEM.

01:57PM 9 MR. COOPERSMITH: YOUR HONOR, IF I COULD ADD ONE  
01:57PM 10 THING. SO THE GOVERNMENT ON THE CRIMINAL SIDE HERE HAS BEEN  
01:57PM 11 INVESTIGATING THIS CASE SINCE SOMETHING LIKE EARLY 2016 AND  
01:57PM 12 HAS -- IT'S NOW, YOU KNOW, SINCE THE INDICTMENT WAS IN JUNE OR  
01:57PM 13 MID-JUNE OF 2018 AND WE JUST RECEIVED 3 MILLION PAGES OF  
01:57PM 14 DOCUMENTS, YOU KNOW, IN THE MIDDLE OF MARCH. SO JUST VERY  
01:57PM 15 RECENTLY.

01:57PM 16 SO IT IS OBVIOUSLY VERY DIFFICULT TO REVIEW ALL OF THESE  
01:57PM 17 DOCUMENTS, BUT THE THING I WANTED TO SAY IN PARTICULAR THAT  
01:57PM 18 HASN'T BEEN MENTIONED YET IS THAT THE GOVERNMENT HAS SAID THAT  
01:57PM 19 IT'S CONTINUING TO INVESTIGATE THIS CASE. IT'S CONTINUING TO  
01:57PM 20 USE THE GRAND JURY, IT'S CONTINUING TO DO THAT.

01:57PM 21 IF WE SET THE STATUS HEARING IN JULY AS SUGGESTED IN THE  
01:57PM 22 STATUS REPORT AND WE ALL COME BACK AND AT THAT POINT WE'RE ALL  
01:58PM 23 PREPARED TO TALK ABOUT A TRIAL DATE, I'M HOPING THAT THE  
01:58PM 24 GOVERNMENT WILL BE IN A POSITION TO SAY WHETHER THE CASE AS  
01:58PM 25 CHARGED NOW IS WHAT THE CASE IS OR WHETHER IT'S GOING TO BE

01:58PM 1 SOMETHING DIFFERENT.

01:58PM 2 YOU KNOW, CERTAINLY BY JULY THEY OUGHT TO BE ABLE TO DO  
01:58PM 3 THAT IF THEY'RE NOT PREPARED TO DO THAT TODAY.

01:58PM 4 THE COURT: IT SOUNDS LIKE A REQUEST.

01:58PM 5 MR. SCHENK: YOUR HONOR, WE APPRECIATE THE REQUEST.  
01:58PM 6 WE RESPECTFULLY ARE GOING TO DECLINE TO TAKE MR. COOPERSMITH UP  
01:58PM 7 ON THAT REQUEST.

01:58PM 8 IF HIS CONCERN IS BEING SHORT SET; THAT IS, GOING TO TRIAL  
01:58PM 9 ON AN INDICTMENT THAT WAS NOT THE INDICTMENT THAT HE WAS  
01:58PM 10 EXPECTING TO GO TO TRIAL ON, THE SPEEDY TRIAL ACT 3161 DEALS  
01:58PM 11 WITH THAT SCENARIO. THERE IS LAW ON THAT SUBJECT.

01:58PM 12 IF IT ISN'T THAT AND RATHER IT'S JUST TELL US IF YOU'RE  
01:58PM 13 STILL INVESTIGATING US AND IF YOU'RE LIKELY TO FACE MORE  
01:58PM 14 CRIMINAL CHARGES, THAT'S SOMETHING THAT WE DON'T DO AND UNLESS  
01:58PM 15 THE COURT WOULD ORDER US TO WE WOULD ASK TO BE HEARD ON THE  
01:58PM 16 ISSUE. WE'RE NOT INCLINED TO REVEAL ONGOING INVESTIGATIONS.

01:58PM 17 THE COURT: PERHAPS THAT WAS AN ASPIRATIONAL  
01:59PM 18 STATEMENT. WELL, LET'S -- WHY DON'T WE -- IT SEEMS TO ME THAT  
01:59PM 19 I'D LIKE TO GET SOME CLOSURE ON CAPTURING A SERIES OF -- IT  
01:59PM 20 SOUNDS LIKE WE'RE GOING TO CAPTURE A SERIES OF MONTHS THAT THE  
01:59PM 21 TRIAL WILL BE IN, AND OF COURSE WE'LL HAVE TO TIME QUALIFY, ET  
01:59PM 22 CETERA, BUT I WOULD LIKE TO CAPTURE SOME TIME CERTAIN IF WE CAN  
01:59PM 23 SO THAT WE CAN RESERVE THAT TIME FOR ALL OF YOU FOR THE WORK  
01:59PM 24 THAT YOU NEED TO DO.

01:59PM 25 PERHAPS WE CAN BEST DO THAT IN JULY, AND I'M LOOKING AT

01:59PM 1 OUR CALENDAR THINKING JULY 1ST OR JULY 8TH.

01:59PM 2 DO YOU HAVE A PREFERENCE, ADRIANA?

01:59PM 3 THE CLERK: FOR FURTHER STATUS, YOUR HONOR?

01:59PM 4 THE COURT: YES.

01:59PM 5 THE CLERK: JULY 1ST IS A BETTER DATE FOR THE COURT.

01:59PM 6 MR. DOWNEY: THAT'S FINE FOR MS. HOLMES.

01:59PM 7 THE COURT: ANY OBJECTION TO JULY 1ST?

02:00PM 8 MR. COOPERSMITH: NO, YOUR HONOR.

02:00PM 9 MR. BOSTIC: THAT'S FINE FOR THE GOVERNMENT.

02:00PM 10 MR. SCHENK: NO.

02:00PM 11 THE COURT: I HEAR NONE. THANK YOU. THAT WILL

02:00PM 12 ALLOW US ALSO TO HEAR THE JUNE 10TH MOTION SO WE'LL HAVE SOME

02:00PM 13 RESOLUTION ON THE JUNE 10TH MOTION WHICH MAY BE HELPFUL, AND

02:00PM 14 DEPENDING ON YOUR DISCUSSIONS ABOUT THIS DISCOVERY ISSUE,

02:00PM 15 WHATEVER REMAINS MIGHT MAKE THAT MOTION LESS INTENSIVE AS IT

02:00PM 16 PRESENTS NOW. OF COURSE, I ONLY HAVE ONE SIDE OF IT.

02:00PM 17 ALL RIGHT. LET'S CONTINUE THESE CASES. ANYTHING FROM THE

02:00PM 18 S.E.C. THAT I SHOULD KNOW ABOUT?

02:00PM 19 MS. LAMARCA: YES, YOUR HONOR. THIS IS MORE IN THE

02:00PM 20 NATURE OF HOUSEKEEPING BUT CURRENTLY THE COURT HAS A MAY 30TH

02:00PM 21 DATE FOR SETTING A TRIAL IN THIS CASE AND THE LAST TIME THAT WE

02:00PM 22 MET THE S.E.C. HAD AGREED, AT THE DEFENDANT'S REQUEST, TO ALLOW

02:00PM 23 FOR A POTENTIAL EXTENSION OF OUR DISCOVERY CUTOFF.

02:01PM 24 THE COURT: RIGHT.

02:01PM 25 MS. LAMARCA: I GET THAT THIS MAY CHANGE GIVEN THE



02:01PM 1 STAY MOTION, ET CETERA, AND WE'RE WILLING TO DEFER THAT ISSUE  
02:01PM 2 UNTIL THE FUTURE, BUT I DO THINK THAT SINCE THE MOTION HAS BEEN  
02:01PM 3 SET FOR JUNE 10TH, WE AT LEAST NEED TO TAKE CARE OF THIS MAY  
02:01PM 4 30TH DATE IN THE INTERIM.

02:01PM 5 MR. COOPERSMITH: THAT MAKES SENSE, YOUR HONOR, THAT  
02:01PM 6 WE MOVE THE MAY 30TH. I AGREE WITH MS. LAMARCA.

02:01PM 7 REGARDING THE STAY MOTION, AS THE COURT ALREADY SAID THAT  
02:01PM 8 WILL BE HEARD ON JUNE 10TH, AND WE'LL RESPOND, AND I'M SURE THE  
02:01PM 9 GOVERNMENT WILL SUBMIT A REPLY BRIEF.

02:01PM 10 BUT I THINK THAT THE REQUEST FOR A CONTINUANCE OR AN  
02:01PM 11 EXTENSION OF DISCOVERY SHOULD BE RULED AND DECIDED ON TODAY,  
02:01PM 12 AND THERE'S A FEW REASONS FOR THAT.

02:01PM 13 FIRST OF ALL, THE S.E.C. AND THE DEFENSE FOR MR. BALWANI  
02:01PM 14 AGREE THAT THERE SHOULD AN EXTENSION OF DISCOVERY. WE DISAGREE  
02:01PM 15 ABOUT EXACTLY WHAT THE LENGTH SHOULD BE. THEY SAID UP TO 3  
02:01PM 16 MONTHS, AND WE THINK THE MAGNITUDE OF THIS CASE AND THE VOLUME  
02:01PM 17 OF DOCUMENTS WARRANT AN EXTENSION OF 12 MONTHS, BUT WE AGREE ON  
02:02PM 18 AN EXTENSION.

02:02PM 19 SO IF THAT CAN BE DECIDED UPON, THAT WAY WHAT WILL HAPPEN  
02:02PM 20 IS THAT IF THE COURT DENIES THE GOVERNMENT'S MOTION TO STAY,  
02:02PM 21 WE'LL BE IN A POSITION TO CONTINUE TO TAKE DISCOVERY AND ALSO  
02:02PM 22 RIGHT NOW WE'LL BE ABLE TO GET THINGS ON THE CALENDAR, BECAUSE  
02:02PM 23 AS I SAID THE LAST TIME I WAS BEFORE THE COURT, SOME OF THESE  
02:02PM 24 WITNESSES ARE BILLIONAIRES AND OTHERS OF THAT ILK WHO MAKE IT  
02:02PM 25 VERY DIFFICULT TO SCHEDULE, AND WE TRY TO BE COURTEOUS IN

02:02PM 1 SCHEDULING TIME FOR THAT THOSE PEOPLE.

02:02PM 2 THE COURT: THEY HAVEN'T MET THE UNITED STATES  
02:02PM 3 MARSHAL.

02:02PM 4 MR. COOPERSMITH: IF IT CAME TO THAT I SUPPOSE THEY  
02:02PM 5 COULD, BUT WE DON'T WANT TO HAVE THAT SITUATION IF WE CAN AVOID  
02:02PM 6 IT.

02:02PM 7 (LAUGHTER.)

02:02PM 8 MR. COOPERSMITH: BUT, YOUR HONOR, IF WE AGREE ON  
02:02PM 9 THE EXTENSION OR THE COURT RULES ON AN EXTENSION TODAY,  
02:02PM 10 OBVIOUSLY IF ON JUNE 10TH THE COURT DOES STAY THE CASE, OVER  
02:02PM 11 OUR OPPOSITION, THEN THAT WILL BE THE END OF DISCOVERY UNTIL  
02:02PM 12 SOME OTHER POINT IN TIME.

02:02PM 13 THE COURT: I APPRECIATE THAT. I THINK A YEAR STAY  
02:02PM 14 IS A LITTLE -- THAT'S JUST A BRIDGE TOO FAR TODAY FOR ME TO  
02:03PM 15 MAKE.

02:03PM 16 ANYTHING FURTHER ON THAT?

02:03PM 17 AND PERHAPS -- I DON'T MEAN TO SUGGEST THAT DISCOVERY  
02:03PM 18 SHOULD BE INCREMENTAL AT ALL. I'D LIKE TO GIVE YOU FULL  
02:03PM 19 LATITUDE OF DISCOVERY THAT YOU NEED, BUT I DO THINK THAT IN ALL  
02:03PM 20 CANDOR A YEAR IS A BIT MUCH, AND I WAS LOOKING AT 90 DAYS AND  
02:03PM 21 PERHAPS WE CAN START WITH THAT AND SEE WHERE WE GO.

02:03PM 22 EVERYTHING IS KIND OF FLUID HERE IN ANY EVENT.

02:03PM 23 MR. COOPERSMITH: I UNDERSTAND WHAT THE COURT IS  
02:03PM 24 SAYING OF COURSE. THE PROBLEM IS, YOUR HONOR, IF WE ONLY HAVE  
02:03PM 25 A THREE-MONTH EXTENSION, WE'RE NOW GOING TO BE IN THE SUMMER

02:03PM 1 TOWARDS THE END OF THAT PERIOD. IT'S GOING TO BE VERY  
02:03PM 2 DIFFICULT TO SCHEDULE THINGS FOR SOME WITNESSES,  
02:03PM 3 NOTWITHSTANDING THE POWER OF THE UNITED STATES MARSHALS, YOUR  
02:03PM 4 HONOR, AND --

02:03PM 5 THE COURT: YOU UNDERESTIMATE THEM.

02:03PM 6 MR. COOPERSMITH: NO, I DON'T. I WAS A FEDERAL  
02:03PM 7 PROSECUTOR, AND I HAVE TOTAL FAITH IN THE PARTIALS, BUT I DON'T  
02:03PM 8 THINK THAT'S WHERE WE REALLY WANT TO BE.

02:03PM 9 THE COURT: SURE. I APPRECIATE THAT.

02:03PM 10 MR. COOPERSMITH: SO THE PROBLEM IS IN SOME CASES  
02:04PM 11 WE'RE ALREADY TALKING TO WITNESSES, ASSUMING THERE WAS ANY  
02:04PM 12 EXTENSION, OF SCHEDULING THINGS IN JULY, AND THAT'S THREE  
02:04PM 13 MONTHS FROM NOW.

02:04PM 14 SO I THINK IT'S GOING TO MAKE IT VERY DIFFICULT FOR  
02:04PM 15 SCHEDULING PURPOSES IF WE HAVE ONLY A THREE MONTH EXTENSION  
02:04PM 16 GIVEN THAT WILL BE RIGHT AT THE SUMMER PERIOD AT THAT POINT.

02:04PM 17 SO IF THE COURT IS NOT WILLING TO GRANT A 12-MONTH  
02:04PM 18 EXTENSION, OBVIOUSLY THAT'S WHAT WE REQUESTED, SOME PERIOD OF  
02:04PM 19 TIME BETWEEN THE 3 MONTHS THE S.E.C. SAID AND THE 12 MONTHS  
02:04PM 20 WE'RE SAYING WOULD MAKE SENSE.

02:04PM 21 AGAIN, YOU KNOW, THE STAY MOTION WON'T AFFECT IT BECAUSE  
02:04PM 22 THE COURT CAN RULE ON JUNE 10TH ONE WAY OR THE OTHER.

02:04PM 23 MS. LAMARCA: YOUR HONOR, WE OPPOSE A LONGER  
02:04PM 24 EXTENSION FOR THE REASONS THAT WE SET FORTH IN THE JOINT CMC  
02:04PM 25 STATEMENT. I THINK ONE THING THAT WE HAVE NOT SEEN IN THIS

02:04PM 1 CASE IS ANYTHING OTHER THAN ARGUMENTS ABOUT THINGS LIKE  
02:04PM 2 DISCOVERY, AND IT IS, NO DOUBT, DIFFICULT TO GET SOME WITNESSES  
02:04PM 3 TO AGREE TO CERTAIN DATES, BUT WE DO IT ALL OF THE TIME.  
02:04PM 4 THAT'S WHAT WE DO.

02:04PM 5 AND IN OUR CASES A THREE MONTH EXTENSION USUALLY WORKS FOR  
02:05PM 6 EVERYONE. SO I CAN'T IMAGINE IF THIS IS SO DIFFERENT THAT IT  
02:05PM 7 REALLY REQUIRES THAT WE DEPART FROM THE NORMS IN ALL OF OUR  
02:05PM 8 CASES. WE WOULD OPPOSE ANYTHING LONGER THAN THREE MONTHS.

02:05PM 9 MR. COOPERSMITH: YOUR HONOR, ONE OTHER THING ABOUT  
02:05PM 10 THAT. AS WE SAID IN THE STATUS REPORT, EVERY STEP OF THE WAY  
02:05PM 11 WE HAVE RUN INTO NOTHING BUT OBSTACLES WITH SCHEDULING  
02:05PM 12 WITNESSES FOR DEPOSITIONS, FOR DOCUMENTS. EVEN WHEN IT COMES  
02:05PM 13 TO THE UNITED STATES GOVERNMENT ITSELF, WE ISSUED SUBPOENAS TO  
02:05PM 14 CMS AND FDA, AS I SAID BEFORE, IN SEPTEMBER OF 2018, AND WE'VE  
02:05PM 15 MET AND CONFERRED FOR MONTHS, AND MONTHS, AND MONTHS AND NOW WE  
02:05PM 16 ARE TRYING TO FRAME THE ISSUES BEFORE THE COURT IF WE HAVE TO  
02:05PM 17 GO TO THE MOTION.

02:05PM 18 IT'S ONE THING AFTER ANOTHER. I CAN TELL YOU THESE THIRD  
02:05PM 19 PARTIES, THESE BILLIONAIRES AND OTHERS, NOT SURPRISINGLY, THEY  
02:05PM 20 REALLY DON'T WANT TO HAVE ANYTHING TO DO WITH THIS CASE. THEY  
02:05PM 21 HAVE BIG LAW FIRMS REPRESENTING THEM. IT'S NOT THAT WE'RE  
02:05PM 22 POWERLESS, YOUR HONOR. WE UNDERSTAND WE CAN PUT OUR FOOT DOWN.  
02:06PM 23 WE HAVE IN SOME INSTANCES. IT'S VERY DIFFICULT, AND AS WE HAVE  
02:06PM 24 SAID, WE HAVE RUN INTO NOTHING BUT OBSTACLES.

02:06PM 25 IN ADDITION, AS WE SAID IN THE STATUS REPORT, WE LEARNED

02:06PM 1 THAT THE S.E.C. HAD DOCUMENTS FROM SOME AGENCIES FOR A COUPLE  
02:06PM 2 OF YEARS, AND, YOU KNOW, HAD NOT PRODUCED THEM INITIALLY AND  
02:06PM 3 THEN WE FINALLY DID GET THEM.

02:06PM 4 I'VE WRITTEN THREE LETTERS, YOUR HONOR, TO COUNSEL FOR THE  
02:06PM 5 S.E.C. SAYING CAN YOU PLEASE CONFIRM THAT YOU HAVE EVERY  
02:06PM 6 DOCUMENT THAT YOU HAVE FROM THIRD PARTIES AND THAT'S  
02:06PM 7 DISCOVERABLE, AND I HAVE NEVER GOTTEN A RESPONSE TO ANY OF THE  
02:06PM 8 PARTIES ON THAT POINT.

02:06PM 9 I UNDERSTAND COUNSEL FOR THE S.E.C. IS BUSY AND THEY HAVE  
02:06PM 10 A LOT OF CASES, BUT THE POSTURE OF THIS CASE RIGHT NOW, I  
02:06PM 11 THINK, FULLY WARRANTS A LONGER EXTENSION THAN THE THREE MONTHS,  
02:06PM 12 AND I THINK THAT WILL MAKE DISCOVERY EFFICIENT.

02:06PM 13 AGAIN, THE COURT CAN RULE ON THE OTHER ISSUE ON JUNE 10TH.

02:06PM 14 MS. LAMARCA: WE DON'T HAVE ANYTHING FURTHER. WE  
02:06PM 15 DISAGREE WITH COUNSEL'S REPRESENTATIONS ABOUT DISCOVERY IN THIS  
02:06PM 16 CASE SO FAR.

02:06PM 17 THE COURT: OKAY. THANK YOU. ANYONE ELSE WISH TO  
02:06PM 18 BE HEARD ON THIS? ALL RIGHT. THANK YOU VERY MUCH.

02:06PM 19 WELL, I APPRECIATE YOUR RECOGNIZING ASPIRATIONAL GOALS BUT  
02:07PM 20 A YEAR, THAT'S A BRIDGE TOO FAR, AS I'VE SAID. SO 90 DAYS  
02:07PM 21 SOUNDS REASONABLE TO ME, BUT I'LL MAKE IT 120 DAYS. I KNOW  
02:07PM 22 THAT'S NOT EXACTLY WHAT YOU WANT, BUT WE'LL MAKE IT 120 DAYS  
02:07PM 23 AND THEN WE'LL HOPEFULLY -- WELL, WE'LL SEE EACH OTHER JULY  
02:07PM 24 1ST, AND BY THEN WE'LL HAVE SOME KNOWLEDGE AS TO THE JUNE 10TH  
02:07PM 25 MOTION AS WELL AND THAT WILL BE HELPFUL AS WELL.

02:07PM 1 MR. COOPERSMITH: JULY 1ST, YOUR HONOR?

02:07PM 2 THE COURT: YES. JULY 1ST WILL BE OUR NEXT STATUS

02:07PM 3 CONFERENCE, JULY 1ST, JULY 1ST, AND THAT WILL BE AT 1:30. I

02:07PM 4 WILL EXCLUDE TIME AS TO EACH DEFENDANT IN EACH CASE TO ALLOW

02:07PM 5 FOR EFFECTIVE REPRESENTATION, AND THERE'S OTHER TERABYTES AND

02:07PM 6 OTHER DISCOVERY THAT YOU HAVE TALKED ABOUT TODAY THAT COUNSEL

02:07PM 7 HAS INDICATED THEY NEED TO REVIEW.

02:07PM 8 ANY OBJECTION TO THE COURT EXCLUDING TIME ON THAT BASIS?

02:07PM 9 MR. DOWNEY: NO OBJECTION FOR MS. HOLMES.

02:08PM 10 MR. COOPERSMITH: NO OBJECTION FOR MR. BALWANI.

02:08PM 11 THE COURT: ALL RIGHT. TIME IS EXCLUDED, AND WE'LL

02:08PM 12 SEE EVERYONE BACK ON THAT DATE.

02:08PM 13 ANYTHING FURTHER BEFORE WE END TODAY?

02:08PM 14 MR. COOPERSMITH: ONE QUICK THING, YOUR HONOR.

02:08PM 15 THE COURT: YES.

02:08PM 16 MR. COOPERSMITH: UNTIL THE JUNE 10TH MOTION IS

02:08PM 17 HEARD AND THE COURT RULES ON THAT, THERE'S NO STAY IN EFFECT?

02:08PM 18 THE COURT: YES, THAT'S CORRECT. THANK YOU VERY

02:08PM 19 MUCH. WE'LL SEE YOU SOON.

20 (COURT CONCLUDED AT 2:08 P.M.)

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22

23

24

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: APRIL 25, 2019

# EXHIBIT B



UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-18-00258-EJD &  
 ) CV-18-01603-EJD  
 PLAINTIFF, )  
 )  
 VS. ) SAN JOSE, CALIFORNIA  
 )  
 ELIZABETH A. HOLMES AND RAMESH ) JUNE 28, 2019  
 SUNNY BALWANI, )  
 ) PAGES 1 - 71  
 DEFENDANTS. )  
 )  
 \_\_\_\_\_ )  
 )  
 SECURITIES AND EXCHANGE )  
 COMMISSION, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 RAMESH SUNNY BALWANI, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE EDWARD J. DAVILA  
 UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
 BY: JOHN BOSTIC  
 ROBERT LEACH  
 JEFFREY SCHENK  
 150 ALMADEN BOULEVARD, SUITE 900  
 SAN JOSE, CALIFORNIA 95113  
 (APPEARANCES CONTINUED ON THE NEXT PAGE.)  
 OFFICIAL COURT REPORTER:  
 IRENE L. RODRIGUEZ, CSR, RMR, CRR  
 CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
 TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP  
BY: KEVIN M. DOWNEY  
LANCE WADE  
725 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE  
BY: JOHN D. CLINE  
ONE EMBARCADERO CENTER, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94111

FOR DEFENDANT BALWANI: DAVIS, WRIGHT & TREMAINE LLP  
BY: STEPHEN CAZARES  
505 MONTGOMERY STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94111

CORR CRONIN LLP  
BY: STEVEN FOGG  
1001 FOURTH AVENUE, SUITE 3900  
SEATTLE, WASHINGTON 98154

FOR THE S.E.C.: UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION  
BY: SUSAN F. LAMARCA  
MARC D. KATZ  
44 MONTGOMERY STREET, SUITE 2600  
SAN FRANCISCO, CALIFORNIA 94104

1 SAN JOSE, CALIFORNIA

JUNE 28, 2019

2 P R O C E E D I N G S

10:05AM 3 (COURT CONVENED AT 10:05 A.M.)

10:05AM 4 (COURT CONVENED AT 10:05 A.M.)

10:05AM 5 THE COURT: THIS IS 18-258, UNITED STATES VERSUS  
10:05AM 6 ELIZABETH HOLMES AND UNITED STATES VERSUS RAMESH SUNNY BALWANI.

10:05AM 7 THERE'S A COMPANION CASE 18-1603 WHICH IS THE S.E.C. CASE,  
10:06AM 8 AND WE'LL TURN TO THAT IN JUST A MOMENT.

10:06AM 9 MAY I HAVE THE APPEARANCES, PLEASE.

10:06AM 10 MR. BOSTIC: GOOD MORNING, YOUR HONOR. JOHN BOSTIC,  
10:06AM 11 JEFF SCHENK, AND BOB LEACH FOR THE UNITED STATES.

10:06AM 12 THE COURT: THANK YOU. GOOD MORNING.

10:06AM 13 MR. DOWNEY: GOOD MORNING, YOUR HONOR. KEVIN DOWNEY  
10:06AM 14 FROM WILLIAMS & CONNOLLY FOR MS. HOLMES AND WITH ME ARE  
10:06AM 15 PARTNER, LANCE WADE, AND OUR CO-COUNSEL, JOHN CLINE.

10:06AM 16 THE COURT: THANK YOU. GOOD MORNING.

10:06AM 17 MR. CAZARES: GOOD MORNING, YOUR HONOR.  
10:06AM 18 STEPHEN CAZARES FOR MR. BALWANI. WITH ME IS MR. STEVEN FOGG  
10:06AM 19 WHO ALSO REPRESENTS MR. BALWANI.

10:06AM 20 THE COURT: THANK YOU. GOOD MORNING.

10:06AM 21 LET ME JUST THANK COUNSEL FOR -- WE DID RESCHEDULE THIS TO  
10:06AM 22 THIS MORNING FROM -- I ADVANCED IT FROM MONDAY, AND LET ME  
10:06AM 23 THANK YOU FOR THAT COURTESY.

10:06AM 24 WELL, TODAY WE HAVE A MOTION TO COMPEL REGARDING DISCOVERY  
10:06AM 25 MATTERS. WE HAD SOME DISCUSSIONS ABOUT DISCOVERY WHEN WE WERE

10:06AM 1 LAST IN COURT AND THERE WAS SOME REPRESENTATIONS MADE.

10:06AM 2 I SUPPOSE -- LET ME INDICATE WHAT I HAVE REVIEWED HERE. I  
10:06AM 3 HAVE REVIEWED YOUR PLEADINGS IN THIS CASE WHICH INCLUDE  
10:07AM 4 DOCUMENT 67, WHICH IS THE MOTION TO COMPEL; DOCUMENT 79, WHICH  
10:07AM 5 IS THE GOVERNMENT'S OPPOSITION; DOCUMENT 81, WHICH IS THE  
10:07AM 6 REPLY, DEFENSE REPLY, AND ALL OF THE ATTACHMENTS THERETO;  
10:07AM 7 DOCUMENT 82 IS MR. BALWANI'S REPLY; DOCUMENT 81-1 IS THE  
10:07AM 8 DECLARATION OF MR. WADE IN FURTHER SUPPORT OF THE MOTION TO  
10:07AM 9 COMPEL.

10:07AM 10 I'VE LOOKED ALSO AT THE JOINDER FILED BY MR. BALWANI AND  
10:07AM 11 THAT WAS DOCUMENT 68; AND DOCUMENT 88, FINALLY, IS THE JOINT  
10:07AM 12 SUPPLEMENTAL CASE MANAGEMENT STATEMENT; AND DOCUMENT 80 IS THE  
10:07AM 13 JOINT STATEMENT.

10:07AM 14 HAVE I LEFT ANYTHING OUT THAT EITHER PARTY WANTS TO DRAW  
10:07AM 15 MY ATTENTION TO?

10:07AM 16 MR. BOSTIC: NO, YOUR HONOR, NOT FOR THE GOVERNMENT.  
10:07AM 17 THANK YOU VERY MUCH.

10:07AM 18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10:08AM 19 WELL, WHY DON'T I GET AN UPDATE, IF I MAY AS TO -- PARDON  
10:08AM 20 ME. BEFORE WE DO THAT, I DO WANT TO DO ONE THING. I'D LIKE TO  
10:08AM 21 SET THE CASE FOR TRIAL. SO WHY DON'T WE GET OUR CALENDARS OUT  
10:08AM 22 AND LET'S LOOK AND SEE WHAT WOULD BE APPROPRIATE FOR THAT.

10:08AM 23 I DID READ IN YOUR STATEMENTS THAT YOU'RE SUGGESTING  
10:08AM 24 SEPTEMBER OF NEXT YEAR AS A DATE FOR TRIAL. I APPRECIATE THAT  
10:08AM 25 OFFER.

10:08AM 1 I'M GOING TO SUGGEST SOMETHING DIFFERENT. THE THOUGHT  
10:08AM 2 OCCURS TO ME THAT THE TIME TO SECURE A JURY BEGINNING IN  
10:08AM 3 SEPTEMBER FOR THE DURATION THAT YOU'VE INDICATED, I THINK YOU  
10:08AM 4 SAID 90 DAYS, 3 MONTHS, PUTS US PERILOUSLY CLOSE TO THE HOLIDAY  
10:08AM 5 SEASON. MY SENSE IS THAT THERE WILL BE PROBABLY SOME  
10:08AM 6 DIFFICULTY TO SECURE JURORS WHO WOULD HAVE TIME AND BE CONFLICT  
10:08AM 7 FREE AS WE APPROACH THAT HOLIDAY SEASON. I THINK THAT'S  
10:09AM 8 PERHAPS NOT A GOOD PATH TO TAKE.

10:09AM 9 I'M GOING TO SUGGEST SOMETHING ELSE. I UNDERSTAND THAT  
10:09AM 10 YOU NEED SOME TIME TO ACCOMPLISH THIS, WHAT YOU NEED TO DO.

10:09AM 11 MY THOUGHT WAS THAT WE, AND LET ME START WITH THE  
10:09AM 12 AMBITIOUS DATE, PERHAPS WE COULD, PERHAPS WE COULD ENGAGE JURY  
10:09AM 13 SELECTION SOME TIME THE END OF JUNE AND TAKE A BREAK AFTER WE  
10:09AM 14 DO THAT. THAT MIGHT TAKE A COUPLE OF DAYS. WE CAN BEGIN THE  
10:09AM 15 TRIAL SOME TIME, THAT IS, EVIDENCE BEGINS SOME TIME IN JULY.  
10:09AM 16 FOR EXAMPLE, WE COULD BEGIN THE TRIAL SOME TIME ON JULY 7TH,  
10:09AM 17 JULY 14TH, AND GO FORWARD.

10:09AM 18 RESTRAIN YOUR ENTHUSIASM, PLEASE.

10:10AM 19 (LAUGHTER.)

10:10AM 20 THE COURT: LET ME ALSO SUGGEST THEN, GOING FORWARD,  
10:10AM 21 WE COULD LOOK -- I'M ALSO LOOKING AT PERHAPS JULY 14TH FOR JURY  
10:10AM 22 SELECTION, THE WEEK OF JULY 14TH FOR JURY SELECTION.

10:10AM 23 WE COULD TAKE THE FOLLOWING WEEK OFF, WHICH IS THE 20TH,  
10:10AM 24 AND THEN PERHAPS ENGAGE EVIDENCE ON THE 28TH, 29TH, THAT WEEK.

10:10AM 25 IF THAT DOESN'T WORK, I'M GIVING YOU SO MANY OUTS HERE, WE

10:10AM 1 COULD -- I THINK THE 28TH WE COULD, AS I SAID, BEGIN JURY  
10:10AM 2 SELECTION AND THEN START EVIDENCE ON THE 4TH OF AUGUST. I  
10:10AM 3 THINK THAT'S -- THAT'S BASICALLY THAT LATTER IS PUSHING IT --  
10:10AM 4 ADVANCING US ABOUT A MONTH, BUT I AM -- I DO HAVE SOME CONCERN  
10:10AM 5 ABOUT GOING INTO THE HOLIDAY SEASON. PERHAPS YOU HAVE HOLIDAY  
10:10AM 6 PLANS AS WELL.

10:11AM 7 MR. SCHENK: YOUR HONOR, FROM THE GOVERNMENT'S  
10:11AM 8 PERSPECTIVE THE GOVERNMENT IS PREPARED TO TRY THE CASE AT THE  
10:11AM 9 CONVENIENCE OF THE COURT.

10:11AM 10 WHEN WE WERE LAST BEFORE YOUR HONOR IN APRIL, THE  
10:11AM 11 GOVERNMENT ASKED THE COURT TO SET THE MATTER FOR TRIAL THEN  
10:11AM 12 RECOGNIZING THAT DISCOVERY WAS VOLUMINOUS AND THE DEFENSE WOULD  
10:11AM 13 NEED A SIGNIFICANT AMOUNT OF TIME TO PREPARE.

10:11AM 14 WE ASKED THE COURT TO SET A TRIAL DATE EVEN A YEAR FROM  
10:11AM 15 THAT. SO AT THAT TIME WE PROPOSED ROUGHLY APRIL OF 2020.

10:11AM 16 SINCE THEN WE HAD A MEET AND CONFER WITH THE DEFENSE AND  
10:11AM 17 IN PARTICULAR COUNSEL FOR MS. HOLMES DESCRIBED TO US THE AMOUNT  
10:11AM 18 OF WORK THAT THEY HAD LEFT TO DO TO PREPARE FOR TRIAL, AND IT  
10:11AM 19 WAS KIND OF WITH THAT UNDERSTANDING THAT IN ORDER TO PREPARE  
10:11AM 20 THEY FELT APRIL WAS REALLY TOO SOON.

10:11AM 21 SO I THINK THE COURT HAS GIVEN US ALL FINE SUGGESTIONS  
10:11AM 22 FROM THE GOVERNMENT'S PERSPECTIVE, AND WE WOULD LEAVE IT UP TO  
10:11AM 23 THE DEFENSE TO HEAR IF ONE OF THOSE DATES IS A POINT AT WHICH  
10:11AM 24 THEY WOULD BE PREPARED TO BEGIN THE TRIAL.

10:11AM 25 BUT FROM THE GOVERNMENT'S PERSPECTIVE WE THINK THAT WE

1 WILL BE ABLE TO BEGIN AT ANY OF THOSE DATES.

2 I WOULD ALSO ASK, THOUGH, THAT -- AND I'M SURE THIS IS  
3 WHAT THE COURT MEANT -- THAT THIS IS A FIRM TRIAL DATE. WE'RE  
4 NOT GOING TO BE COMING BACK BEFORE YOUR HONOR IN APRIL OF 2020  
5 AND SAYING WE NOW NEED SOME ADDITIONAL TIME. WE'RE GOING TO  
6 HAVE SIGNIFICANT SUBPOENAS TO SERVE IN THE CASE, MANY CIVILIAN  
7 WITNESSES, AND THERE'S REAL VALUE TO HAVING FIRM TRIAL DATES.  
8 SO WHEN WE ASK WITNESSES TO CLEAR THEIR SCHEDULES AND TO BE  
9 AVAILABLE FOR COURT, THAT IS A ONE-TIME REQUEST AND WE CAN SAY  
10 IT WITH SOME LEVEL OF CERTAINTY, AND I APPRECIATE I'M SURE  
11 THAT'S WHAT THE COURT MEANT WHEN IT WAS OFFERING THESE DATES.

12 THE COURT: WELL, THANK YOU, MS. SCHENK. THAT IS  
13 WHAT I MEAN. YOU'RE ASKING ME TO SET ASIDE THREE MONTHS OF  
14 COURT TIME FOR THIS CASE, AND BOTH SIDES ARE ENTITLED TO THAT.

15 I'LL DO THAT. I'LL DO THAT.

16 OF COURSE, YOU KNOW THE BUSINESS OF FEDERAL COURTS. I  
17 NEED TO DISAPPOINT OTHER COURT USERS FOR THAT TIME PERIOD. SO  
18 I DO WANT TO SECURE FIRM TRIAL DATES THAT GIVES EVERYONE HERE A  
19 FIRM EVENT HORIZON TO FOCUS ON SUCH THAT THERE WON'T BE ANY  
20 CHANGES TO THAT.

21 COUNSEL.

22 MR. DOWNEY: YOUR HONOR, I WOULD SAY WE SHARE -- WE  
23 UNDERSTAND THE SITUATION, WE UNDERSTAND THE NEED TO SET A DATE  
24 GIVEN THE LENGTH OF THE TRIAL.

25 I WOULD SAY OF THE DATES THAT YOU HAVE SUGGESTED, WE WOULD

10:13AM 1 SUGGEST COMMENCING WITH SELECTION ON THE 28TH OF JULY.

10:13AM 2 THE COURT: EXPERIENCED DEFENSE COUNSEL ALWAYS LOOKS  
10:13AM 3 TO THE LATTER DATE. NO CRITICISM INVOLVED.

10:13AM 4 WHEN I WAS PRACTICING, THAT WAS SOMETHING THAT I  
10:13AM 5 OCCASIONALLY DID AS WELL.

10:13AM 6 MR. DOWNEY: NO, I UNDERSTAND. AND I ONLY WANT TO  
10:13AM 7 SAY, BECAUSE THESE ISSUES ARE NOT BEFORE THE COURT TODAY, OUR  
10:13AM 8 CONCERN IS NOT REALLY ABOUT THE DATE AS AN ABSTRACTION.

10:13AM 9 OUR CONCERN IS THAT THERE ARE ANY NUMBER OF ISSUES IN  
10:13AM 10 TERMS OF THE GOVERNMENT'S RULE 26 COMPLIANCE THAT ARE STILL  
10:13AM 11 OUTSTANDING.

10:13AM 12 WE ARE CONTINUING TO GET LARGE VOLUMES OF MATERIAL FROM  
10:14AM 13 THE GOVERNMENT SO I THINK --

10:14AM 14 THE COURT: WELL, THAT'S THE PROVERB, YOU ASK AND  
10:14AM 15 YOU SHALL RECEIVE. IT'S NOT A PROVERB BUT SOMEONE SAID THAT  
10:14AM 16 ONCE. SO, YOU KNOW, YOU ASK FOR IT, YOU GET IT, AND THEN OF  
10:14AM 17 COURSE YOU HAVE TO DIGEST IT. SO I APPRECIATE THAT. THERE'S  
10:14AM 18 VOLUMINOUS DISCOVERY HERE.

10:14AM 19 I THINK IF WE SET, AND THAT WAS MY THOUGHT, AND I'M SORRY  
10:14AM 20 TO INTERRUPT YOU, BUT MY THOUGHT WAS THE FIRST THING WE DO IS  
10:14AM 21 LET'S SET A TRIAL DATE THAT WE CAN ALL FOCUS ON AND THEN YOU  
10:14AM 22 CAN ADJUST YOUR WORK SCHEDULES ACCORDINGLY, THE PRODUCTION, AND  
10:14AM 23 I'M GOING TO TALK ABOUT THAT IN A MOMENT.

10:14AM 24 JUST TO ADVANCE THAT CONVERSATION, I'LL PROBABLY BE  
10:14AM 25 TELLING THE GOVERNMENT, YOU NEED TO TELL THESE FOLKS TO RAMP IT



10:14AM 1 UP BECAUSE WE NOW HAVE A TRIAL DATE.

10:14AM 2 MR. DOWNEY: YEAH. AND I EXPECT, YOUR HONOR, THAT  
10:14AM 3 WE'LL BE ABLE TO WORK WITH THE GOVERNMENT AND EITHER AGREE ON  
10:14AM 4 OR COME CLOSE TO AGREEING ON A PROPOSED SCHEDULE THAT CONFORMS  
10:14AM 5 WITH THE TRIAL DATE.

10:14AM 6 AND I WOULD SAY WE'LL LIKELY BE ASKING THE COURT TO BE  
10:14AM 7 ATTENTIVE TO THAT RULE 16 CUTOFF.

10:14AM 8 THE COURT: SURE. OKAY.

10:14AM 9 MR. DOWNEY: THANK YOU, YOUR HONOR.

10:15AM 10 THE COURT: LET ME ASK YOUR COLLEAGUES.

10:15AM 11 MR. CAZARES: YOUR HONOR, MR. BALWANI AGREES WITH  
10:15AM 12 MR. DOWNEY THAT AUGUST IS LIKELY BETTER, LESS FOR OUR SCHEDULE,  
10:15AM 13 BUT ALSO I'VE TRIED CASES IN THE SUMMER TIME AND JURORS ALSO  
10:15AM 14 HAVE VACATION PLANS. JULY TENDS TO BE VERY DIFFICULT TO SECURE  
10:15AM 15 A LONG-TERM VOIR DIRE IN FEDERAL COURT.

10:15AM 16 SO I WOULD CONCUR THAT AUGUST MAKES SENSE. IF WE START ON  
10:15AM 17 THE 28TH, THAT WOULD AT LEAST AVOID SOME OF THE JUROR VACATION  
10:15AM 18 ISSUES THAT OFTEN COME UP.

10:15AM 19 THE COURT: I'M SORRY. WHEN YOU SAY, "START," ARE  
10:15AM 20 YOU SUGGESTING START EVIDENCE OR START THE JURY SELECTION?

10:15AM 21 MR. CAZARES: I THINK TO THE EXTENT THAT WE START  
10:15AM 22 THE JURY SELECTION AT THE END OF JULY, I DON'T THINK -- I THINK  
10:15AM 23 THAT WOULD LIKELY AVOID MOST JUROR VACATION ISSUES. I THINK  
10:15AM 24 THAT'S THE GOAL IN SOME WAYS, TRY TO AVOID THEIR HOLIDAY  
10:15AM 25 VACATIONS AND TRY TO AVOID MAYBE SOME OF THEIR SUMMER VACATIONS

10:15AM 1 AND PLANT THE TRIAL SOMEWHERE RIGHT IN BETWEEN.

10:15AM 2 THE COURT: MS. SCHENK?

10:15AM 3 MR. SCHENK: THAT IS FINE WITH THE GOVERNMENT. AS I  
10:15AM 4 UNDERSTAND IT JULY 28TH IS JURY SELECTION?

10:15AM 5 THE COURT: RIGHT, THAT IS THE DATE THAT I WAS  
10:16AM 6 PROPOSING JULY 28TH. MY SENSE IS THAT WE'LL PROBABLY BLEED  
10:16AM 7 INTO THE 29TH.

10:16AM 8 BUT WE'LL DO JURY SELECTION THAT WEEK. THERE WON'T BE ANY  
10:16AM 9 RECEIPT OF EVIDENCE OR OPENING STATEMENTS UNTIL THE FOLLOWING  
10:16AM 10 WEEK.

10:16AM 11 EVIDENCE AND OPENING STATEMENTS WILL BEGIN AUGUST 4TH,  
10:16AM 12 AUGUST 4TH.

10:16AM 13 IS THAT AGREEABLE?

10:16AM 14 MR. SCHENK: YES.

10:16AM 15 MR. DOWNEY: YES, YOUR HONOR.

10:16AM 16 MR. CAZARES: YES, YOUR HONOR.

10:16AM 17 THE COURT: ALL RIGHT. THANK YOU. THEN WE'VE GOT  
10:16AM 18 OUR TRIAL DATE SET.

10:16AM 19 I WON'T SET A PRETRIAL CONFERENCE DATE YET. WHAT I'D LIKE  
10:16AM 20 TO DO IS HAVE OUR CONVERSATION ABOUT DISCOVERY, AND THEN IF I  
10:16AM 21 SET AN INTERIM STATUS DATE, AT WHICH POINT I'LL THEN SET AN  
10:16AM 22 INTERIM STATUS CONFERENCE DATE DEPENDING ON THE DISCOVERY AS  
10:16AM 23 YOU SUGGESTED.

10:16AM 24 OKAY. MADAM CLERK, LET'S RESERVE THAT TIME FOR TRIAL IN  
10:16AM 25 THIS MATTER. I THINK COUNSEL SAID THREE MONTHS?

11:34AM 1 RESOLVE ANY DISPUTES THAT WE MAY HAVE.

11:34AM 2 THE COURT: THAT'S HELPFUL. THANK YOU FOR THAT.

11:34AM 3 THAT WOULD BE HELPFUL.

11:34AM 4 MR. BOSTIC: ARE WE TALKING ABOUT A PROPOSED

11:34AM 5 PRETRIAL CALENDAR?

11:34AM 6 MR. WADE: YES.

11:34AM 7 MR. BOSTIC: I THINK THAT'S A GOOD IDEA.

11:34AM 8 THE COURT: OKAY. THANK YOU. I APPRECIATE YOU

11:34AM 9 ADVANCING THAT. ALSO, AFTER YOU HAVE YOUR MEET AND CONFER, AND

11:35AM 10 I ANTICIPATE IT'S GOING TO BE JUST EMINENTLY SUCCESSFUL, SHOULD

11:35AM 11 YOU NEED TO ADJUST THE 17TH, THAT IS, TO MOVE IT TO TAKE IT OFF

11:35AM 12 CALENDAR BECAUSE EVERYONE IS SATISFIED, JUST LET MS. KRATZMANN

11:35AM 13 KNOW AND WE CAN MAKE ANY ADJUSTMENTS THAT WE NEED ON THAT.

11:35AM 14 THAT'S ALWAYS OPEN.

11:35AM 15 MR. WADE: OPTIMISM SPRINGS ETERNAL, YOUR HONOR.

11:35AM 16 THE COURT: IT DOES. IT DOES. EVEN BOSTON WINS A

11:35AM 17 WORLD SERIES NOW AND THEN. ANYTHING CAN HAPPEN. ANYTHING

11:35AM 18 FURTHER?

11:35AM 19 MR. BOSTIC: JUST ONE HOUSEKEEPING MATTER.

11:35AM 20 THE COURT: YES.

11:35AM 21 MR. BOSTIC: I BELIEVE, OF COURSE, THE PARTIES ARE

11:35AM 22 EACH CONTINUING THEIR INVESTIGATIONS AND REVIEW OF DISCOVERY.

11:35AM 23 IT MIGHT BE APPROPRIATE TO EXCLUDE TIME THROUGH THE TRIAL DATE.

11:35AM 24 THE COURT: THANK YOU. I WAS GOING TO DO THAT. WE

11:35AM 25 HAVE A TRIAL DATE SET. IT'S THE COURT'S INTENT THEN, BASED ON

11:35AM 1 OUR DISCUSSION HERE, AND WE'RE ONLY AT DISCOVERY, BUT I WILL  
11:36AM 2 EXCLUDE TIME TO ALLOW FOR EFFECTIVE PREPARATION OF COUNSEL.  
11:36AM 3 TIME IS EXCLUDED TO OUR TRIAL DATE FOR BOTH DEFENDANTS IN THIS  
11:36AM 4 MATTER.

11:36AM 5 ALL RIGHT. THANK YOU VERY MUCH.

11:36AM 6 MR. BOSTIC: THANK YOU, YOUR HONOR.

11:36AM 7 MR. WADE: THANK YOU, YOUR HONOR.

11:36AM 8 MR. CAZARES: THANK YOU.

11:36AM 9 THE COURT: AND WE HAVE AN S.E.C. CASE. SHOULD WE  
11:36AM 10 CALL THAT NOW BEFORE EVERYONE LEAVES?

11:36AM 11 MS. LAMARCA: SURE.

11:36AM 12 THE COURT: THANK YOU FOR YOUR PATIENCE.

11:36AM 13 MS. LAMARCA: SUSAN LAMARCA WITH THE S.E.C.

11:36AM 14 THE COURT: THANK YOU. GOOD MORNING.

11:36AM 15 MR. KATZ: GOOD MORNING, YOUR HONOR. MARC KATZ FOR  
11:36AM 16 THE S.E.C.

11:36AM 17 THE COURT: THANK YOU. NICE TO SEE YOU AGAIN.

11:36AM 18 MR. CAZARES: GOOD MORNING AGAIN, YOUR HONOR,  
11:36AM 19 STEPHEN CAZARES FOR THE MR. BALWANI.

11:36AM 20 THE COURT: THANK YOU. GOOD MORNING. SO WHAT  
11:36AM 21 SHOULD WE DO IN THIS CASE?

11:36AM 22 MS. LAMARCA: I THINK THE ONLY MATTER THAT WE HAVE  
11:36AM 23 IN OUR JOINT STATEMENT WAS THE CONFIRMATION OF DATES THAT WE  
11:36AM 24 AGREED COULD BE PUSHED OUT ANOTHER I THINK IT WAS 120 DAYS THE  
11:36AM 25 COURT SET FOR THE CUTOFF OF REGULAR DISCOVERY, AND WE CAN HAD

11:36AM 1 HAD A LATTER EXPERT DISCOVERY DATE AND SO WE WANTED TO MAKE  
11:36AM 2 SURE THAT THE COURT WENT AHEAD AND ORDERED THAT DATE.  
11:36AM 3 MR. CAZARES: THAT'S ACCEPTABLE, YOUR HONOR, YES.  
11:37AM 4 MS. LAMARCA: GREAT. THANK YOU, YOUR HONOR.  
11:37AM 5 THE COURT: THANK YOU VERY MUCH. GOOD SEEING YOU  
11:37AM 6 ALL. THANK YOU.  
11:37AM 7 MR. DOWNEY: THANK YOU, YOUR HONOR.  
11:37AM 8 THE CLERK: COURT IS ADJOURNED.  
11:37AM 9 (COURT CONCLUDED AT 11:37 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: JULY 2, 2019

# EXHIBIT C

## NOTICE OF MANUAL FILING

Regarding: EXHIBIT C – Under Seal Document

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office. If you are a participant on this case, this filing will be served in hard-copy shortly. For information on retrieving this filing directly from the court, please see the court's main web site at

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EXHIBIT C – Under Seal Document

# EXHIBIT D

## NOTICE OF MANUAL FILING

Regarding: EXHIBIT D – Under Seal Document

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<http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

The filing was not e-filed for the following reasons:

EXHIBIT D – Under Seal Document



# EXHIBIT E

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-18-00258-EJD  
)  
PLAINTIFF, )  
) SAN JOSE, CALIFORNIA  
VS. )  
) APRIL 15, 2020  
ELIZABETH A. HOLMES, )  
) PAGES 1 - 34  
DEFENDANT. )  
\_\_\_\_\_ )

TRANSCRIPT OF TELEPHONIC PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S (TELEPHONICALLY):

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN C. BOSTIC  
JEFFREY B. SCHENK  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113  
  
BY: ROBERT S. LEACH  
VANESSA BAEHR-JONES  
1301 CLAY STREET, SUITE 340S  
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S (TELEPHONICALLY): (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP  
BY: KEVIN M. DOWNEY  
LANCE A. WADE  
725 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE  
BY: JOHN D. CLINE  
ONE EMBARCADERO CENTER, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94111

SAN JOSE, CALIFORNIA

APRIL 15, 2020

P R O C E E D I N G S

(COURT CONVENED AT 10:17 A.M.)

THE COURT: ALL RIGHT. THANK YOU.

WELL, LET'S CALL THE CASE OF 18-258, THIS IS UNITED STATES OF AMERICA VERSUS ELIZABETH HOLMES. LET ME STATE AT THE OUTSET THAT WE ARE CONDUCTING THIS HEARING BY WAY OF TELEPHONIC HEARING.

THE COURT REFERS THE PARTIES TO GENERAL ORDER 74 FROM OUR CHIEF JUDGE PHYLLIS HAMILTON, AND WE RECOGNIZE BECAUSE OF THE CURRENT COVID-19 CRISIS, HEARINGS CURRENTLY CANNOT BE CONDUCTED IN PERSON WITHOUT SERIOUSLY JEOPARDIZING PUBLIC HEALTH AND SAFETY.

THE SAN JOSE COURTHOUSE WHERE THIS CASE IS VENUED IS CLOSED AND WILL BE CLOSED CURRENTLY TO MAY 1, AND THAT IS SUBJECT TO REVIEW, OF COURSE. BUT THE COURTHOUSE IS CURRENTLY CLOSED, AND WE ARE CONDUCTING THIS HEARING OTHERWISE TELEPHONICALLY.

I'M GOING TO CALL FOR THE APPEARANCES OF THE PARTIES IN JUST A MOMENT. BUT LET ME ASK, WE ARE ON A TELEPHONIC HEARING. I'M GOING TO ASK ALL PARTIES WHO ARE NOT SPEAKING TO PLEASE MUTE YOUR PHONES, PLEASE MUTE YOUR PHONES, AND YOU CAN UNMUTE THEM, OF COURSE, WHEN YOU'RE CALLED UPON TO SPEAK OR WHEN YOU ARE SPEAKING, BUT I WOULD OTHERWISE APPRECIATE THAT.

LET'S START THEN WITH THE GOVERNMENT. IF I COULD CAPTURE

10:19AM 1 THE APPEARANCES FOR THE GOVERNMENT, PLEASE.

10:19AM 2 MR. LEACH: GOOD MORNING, YOUR HONOR. THANK YOU.

10:19AM 3 THIS IS ROBERT LEACH ON BEHALF OF THE UNITED STATES AND  
10:19AM 4 ALSO ON THE LINE ARE MY COLLEAGUES JEFF SCHENK, JOHN BOSTIC,  
10:19AM 5 AND VANESSA BAEHR-JONES.

10:19AM 6 THE COURT: THANK YOU. GOOD MORNING.

10:19AM 7 LET ME TURN TO THE DEFENSE.

10:19AM 8 MR. WADE: GOOD MORNING, YOUR HONOR.

10:19AM 9 IT'S LANCE WADE ON BEHALF OF MS. HOLMES. WITH ME THIS  
10:19AM 10 MORNING ARE KEVIN DOWNEY AND JOHN CLINE.

10:19AM 11 MS. HOLMES IS ALSO PRESENT ON THE LINE.

10:19AM 12 THE COURT: ALL RIGHT. MS. HOLMES, ARE YOU THERE?

10:19AM 13 THE DEFENDANT: YES. GOOD MORNING, YOUR HONOR.

10:19AM 14 THE COURT: THANK YOU. GOOD MORNING.

10:19AM 15 AND, MR. WADE, DO YOU RECOGNIZE THAT VOICE AS THAT OF YOUR  
10:19AM 16 CLIENT?

10:19AM 17 MR. WADE: I DO, YOUR HONOR.

10:20AM 18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10:20AM 19 LET ME ALSO ADD A CAVEAT HERE, MR. WADE. I DON'T KNOW IF  
10:20AM 20 YOU HAVE ENGAGED PROTOCOLS SUCH THAT DURING THIS PROCEEDING IF  
10:20AM 21 YOUR CLIENT WISHES TO SPEAK WITH YOU PRIVATELY, SHE MAY DO  
10:20AM 22 THAT. I NEGLECTED TO MENTION THAT AT OUR LAST HEARING, BUT I  
10:20AM 23 WANT TO ENSURE THAT MS. HOLMES HAS THE OPPORTUNITY TO SPEAK  
10:20AM 24 WITH HER DEFENSE COUNSEL DURING THESE PROCEEDINGS.

10:20AM 25 MY SENSE IS THAT SHE IS NOT SITTING NEXT TO YOU OR DOESN'T

10:20AM 1 HAVE PROXIMITY NEXT TO YOU PHYSICALLY OR YOUR DEFENSE TEAM.

10:20AM 2 MR. WADE: THANK YOU, YOUR HONOR. THAT IS CORRECT.

10:20AM 3 WE ARE NOT -- NONE OF US ARE IN CLOSE PROXIMITY TO ONE ANOTHER.

10:20AM 4 I APPRECIATE THE COMMENTS OF THE COURT.

10:20AM 5 AS THE COURT KNOWS, MS. HOLMES'S APPEARANCE WAS WAIVED IN  
10:20AM 6 THE PRIOR HEARING SO I DON'T BELIEVE THAT WAS AN ISSUE NECESSARY  
10:20AM 7 TO ADDRESS THEN.

10:21AM 8 FOR PURPOSES OF THIS HEARING, IF WE FIND A TIME WHERE WE  
10:21AM 9 BELIEVE WE NEED TO COMMUNICATE WITH HER SEPARATELY, WE'LL NOTE  
10:21AM 10 THAT FOR THE COURT AND MAYBE SEEK THE COURT'S INDULGENCE  
10:21AM 11 BRIEFLY SO WE CAN DO THAT VIA A SEPARATE LINE OF COMMUNICATION.

10:21AM 12 BUT MY HOPE IS THAT WON'T BE NECESSARY THIS MORNING.

10:21AM 13 THE COURT: ALL RIGHT. THANK YOU.

10:21AM 14 BUT I DO WANT YOU TO KNOW THAT I, OF COURSE, WILL AVAIL  
10:21AM 15 MYSELF AND YOU OF THE OPPORTUNITY TO SPEAK WITH YOUR CLIENT.  
10:21AM 16 WE'LL DO WHAT WE NEED TO DO TO ACCOMPLISH THAT. I KNOW YOU  
10:21AM 17 HAVE OTHER COUNSEL THERE. PERHAPS -- I DON'T KNOW HOW MANY  
10:21AM 18 PHONES MS. HOLMES HAS, BUT PERHAPS YOU CAN TEXT ONE ANOTHER OR  
10:21AM 19 SOMETHING.

10:21AM 20 IF YOU NEED TO TAKE A BREAK, JUST LET ME KNOW, AND WE'LL  
10:21AM 21 OF COURSE STOP THE PROCEEDINGS AND ALLOW YOU TO CONFER  
10:21AM 22 PRIVATELY OFF THE RECORD WITH YOUR CLIENT.

10:21AM 23 MR. WADE: THANK YOU, YOUR HONOR.

10:21AM 24 THE COURT: YOU'RE WELCOME. ALL RIGHT.

10:21AM 25 LET ME -- ANYTHING FURTHER? ANYTHING ANYONE WISHES TO SAY

10:21AM 1 BEFORE WE PROCEED?

10:21AM 2 ANYTHING FROM THE GOVERNMENT?

10:21AM 3 ANYTHING FROM, MR. WADE, YOUR TEAM?

10:22AM 4 MR. LEACH: NO, YOUR HONOR. THIS IS ROBERT LEACH

10:22AM 5 FOR THE UNITED STATES. THANK YOU. NOTHING FOR THE GOVERNMENT.

10:22AM 6 MR. WADE: THIS IS LANCE WADE, YOUR HONOR. NOTHING

10:22AM 7 FROM US.

10:22AM 8 THE COURT: ALL RIGHT. THANK YOU.

10:22AM 9 LET ME THANK YOU FOR FILING DOCUMENT 372, WHICH IS YOUR

10:22AM 10 JOINT STATUS MEMORANDUM, AND I APPRECIATE YOUR DILIGENCE IN

10:22AM 11 WORKING TOGETHER AND GETTING THAT FILED IN THE SHORT NOTICE

10:22AM 12 THAT THE COURT GAVE YOU. IT'S VERY HELPFUL.

10:22AM 13 WE HAVE -- OF COURSE, WE'RE LOOKING FORWARD TO THE TRIAL

10:22AM 14 OF THIS MATTER, AND WE'RE DOING THIS UNDER THE UMBRELLA OF THE

10:22AM 15 CURRENT COVID PROCESS THAT CONTINUES TO POSSESS THE NATION, AND

10:22AM 16 WE'RE TRYING OUR BEST TO ACCOMMODATE ALL MATTERS IN OUR COURTS

10:22AM 17 WITH AN EYE TOWARD MAKING SURE THAT BOTH SIDES, EVERYONE HAS

10:22AM 18 FAIR ACCESS TO THE COURTS AND A FAIR HEARING IN THE COURTS.

10:22AM 19 I HAVE YOUR SCHEDULES HERE, AND I APPRECIATE OFFERING THE

10:22AM 20 SCHEDULES. I THINK WHAT REALLY WE NEED TO LOOK AT, AND I ENDED

10:23AM 21 OUR LAST CONVERSATION WITH THIS, WHAT IS THE REALISTIC SCHEDULE

10:23AM 22 FOR A TRIAL IN THIS MATTER?

10:23AM 23 I APPRECIATE BOTH SIDE'S EFFORTS TO AT LEAST PRESS FORWARD

10:23AM 24 TO SEE IF WE CAN HAVE THE CASE PRESENTED TO A JURY THIS YEAR.

10:23AM 25 AND AS I LOOK AT YOUR DOCUMENTS, YOU SUGGEST THAT -- BOTH SIDES

10:23AM 1 SUGGEST OCTOBER TRIAL DATES.

10:23AM 2 MS. HOLMES, THE DEFENSE SUGGESTS AN OCTOBER 26TH DATE.  
10:23AM 3 THE GOVERNMENT DATE IS, PROPOSED DATE IS ABOUT 20 DAYS BEFORE  
10:23AM 4 THAT, OCTOBER 6TH.

10:23AM 5 I ALSO APPRECIATE THE FACT THAT YOU RECOGNIZE THAT WE  
10:23AM 6 SHOULD HAVE AN INTERIM STATUS HEARING, WHICH I THINK IS WISE.  
10:23AM 7 YOU SUGGEST A DATE IN JULY FOR THAT. I THINK ALL OF THAT IS  
10:23AM 8 APPROPRIATE.

10:24AM 9 NOW, I DO NOTE IN THE DOCUMENT IT IS SUGGESTED THAT THE  
10:24AM 10 GOVERNMENT MAY SEEK, MAY SEEK A SUPERSEDING INDICTMENT FROM THE  
10:24AM 11 GRAND JURY. AS NOTED, THE GRAND JURY IS IN SUSPENSION RIGHT  
10:24AM 12 NOW AND THEY'RE NOT ABLE TO PROCEED BECAUSE OF THE CLOSURE OF  
10:24AM 13 OUR COURTHOUSE UNTIL MAY 1ST. AND SO THAT REMAINS TO BE SEEN.  
10:24AM 14 THAT REMAINS TO BE SEEN WHETHER OR NOT A GRAND JURY WOULD  
10:24AM 15 INDEED ISSUE A SUPERSEDING INDICTMENT. I THINK MR. WADE NOTES  
10:24AM 16 THAT IN HIS PLEADINGS AS WELL.

10:24AM 17 SO I WANTED TO ASK BOTH SIDES, PLEASE, TO COMMENT ON THE  
10:24AM 18 OCTOBER TRIAL DATE AS IT'S SET AND THE REALITIES OF THAT GIVEN  
10:24AM 19 THE FACT THAT THE GOVERNMENT MAY SUPERSEDE, AS WELL AS LOOKING  
10:24AM 20 FORWARD INTO 2021 FOR A TRIAL DATE IN EARLY 2021. I KNOW THE  
10:25AM 21 DEFENSE SUGGESTS THAT THAT IS A MORE REALISTIC DATE GIVEN NOT  
10:25AM 22 JUST THE COVID SITUATION BUT THE FACT THAT THERE MIGHT BE A  
10:25AM 23 SUPERSEDING INDICTMENT FILED.

10:25AM 24 MR. LEACH, YOUR TEAM WAS VERY THOROUGH IN YOUR SIDE OF  
10:25AM 25 THE -- YOUR PORTION OF DOCUMENT 372, THE JOINT MEMORANDA, BUT I



10:25AM 1 DID WANT TO GIVE YOU AN OPPORTUNITY TO SPEAK FURTHER ON THAT.  
10:25AM 2 SO WHAT ARE YOUR THOUGHTS ON THIS?

10:25AM 3 MR. LEACH: THANK YOU, YOUR HONOR. I APPRECIATE  
10:25AM 4 THAT. THIS IS ROBERT LEACH.

10:25AM 5 WE BELIEVE AN OCTOBER DATE IS REALISTIC REGARDLESS OF  
10:25AM 6 WHETHER THE CURRENT CHARGING INSTRUMENT IS SUPERSEDED.

10:25AM 7 I WOULD NOTE THAT IT'S APRIL 15TH. WE ARE --

10:25AM 8 THE COURT: YOU KNOW, LET'S -- MR. LEACH, WE'VE  
10:26AM 9 PAUSED FOR A MOMENT BECAUSE THE AT&T LINE THAT WE HAVE,  
10:26AM 10 REGRETTABLY, IT DOES INDICATE WHEN PEOPLE SIGN ON AND OFF, AND  
10:26AM 11 WE'RE TREATED TO A LOVELY LULLABY OF BEATS.

10:26AM 12 WE'RE TRYING TO LOOK AT OTHER TECHNOLOGY THAT PERMITS US  
10:26AM 13 TO ELIMINATE THAT, BUT REGRETTABLY, WE DON'T HAVE IT IN PLACE  
10:26AM 14 FOR THIS HEARING. I APOLOGIZE FOR THAT.

10:26AM 15 MR. LEACH: THANK YOU, YOUR HONOR.

10:26AM 16 I AM GOING TO CHOOSE TO HOPE THAT PEOPLE WERE JOINING THE  
10:26AM 17 LINE RATHER THAN LEAVING THE LINE WHEN I WAS SPEAKING.

10:26AM 18 AS I WAS SAYING, IT'S APRIL 15TH TODAY. WE ARE SIX MONTHS  
10:26AM 19 AWAY FROM OCTOBER. I DON'T THINK IT'S UNUSUAL FOR THE  
10:26AM 20 GOVERNMENT TO SUPERSEDE A CHARGING INSTRUMENT, AND, OF COURSE,  
10:26AM 21 THAT'S A DECISION THAT IS RESERVED FOR THE GOVERNMENT.

10:26AM 22 IN MOST CASES WHEN THE GOVERNMENT DOES THAT, THE FIRST  
10:27AM 23 TIME THAT THE DEFENSE LEARNS ABOUT IT IS WHEN THE GRAND JURY  
10:27AM 24 ELECTS TO RETURN THE INDICTMENT.

10:27AM 25 GIVEN THE COVID SITUATION, WE WANTED TO AVOID THAT, WHICH

1 IS WHY WE PROPOSED PROCEEDING BY SUPERSEDING INFORMATION AND  
2 PROVIDING THE DRAFT SUPERSEDING INFORMATION TO THE DEFENSE SO  
3 THE DEFENSE HAD AT LEAST THE GOVERNMENT'S PERSPECTIVE OF WHAT  
4 IT INTENDED TO DO.

5 I WOULD NOTE THAT THE DEFENDANTS MOVED TO DISMISS THE  
6 INDICTMENTS IN DECEMBER OF 2019. THEY COULD HAVE MOVED TO DO  
7 THAT EARLIER AND ELECTED NOT TO DO THAT.

8 THE COURT RULED ON THE MOTION TO DISMISS IN LATE FEBRUARY,  
9 AND I DON'T THINK IT IS UNREASONABLE OR CAN COME AS A SURPRISE  
10 TO ANYBODY THAT THE GOVERNMENT MIGHT REACT TO THE DISMISSAL OF  
11 CERTAIN COUNTS.

12 SO I THINK THAT ADDRESSES A LITTLE BIT OF WHY I DON'T  
13 THINK ANY SUPERSEDING INSTRUMENT SHOULD COME AS A SURPRISE.

14 I ALSO THINK IT'S A BIT OF AN OVERSTATEMENT TO SAY THAT  
15 THE PROPOSED CHANGES THE GOVERNMENT IS PURSUING REALLY CHANGE  
16 THE TRIAL IN THIS CASE OR REALLY CHANGE THE PERSPECTIVE ON THE  
17 CASE.

18 I DO NOT ANTICIPATE ANY NEW SUBSTANTIAL DISCOVERY. I  
19 THINK WHATEVER DISCOVERY THE GOVERNMENT PRODUCED, I THINK WE  
20 HAVE ALREADY PRODUCED THE VAST BULK OF IT AND THE REMAINDER  
21 WOULD BE QUITE NEGLIGIBLE.

22 I KNOW IN THE STATUS CONFERENCE STATEMENT THE DEFENSE  
23 MENTIONS WALGREENS. WALGREENS HAS BEEN IN THE INDICTMENT SINCE  
24 DAY ONE. THEY MENTION SAFEWAY AND DOCUMENTS RELATING TO  
25 SAFEWAY HAVE BEEN IN DISCOVERY SINCE THE GOVERNMENT'S INITIAL

1 PRODUCTION. THEY MENTIONED THE ADDITIONAL BOARD MEMBERS AS  
2 INVESTORS, AND THAT ALSO HAS BEEN IN DISCOVERY SINCE THE  
3 INITIAL PRODUCTION.

4 I WOULD NOTE THAT MANY OF THE MATTERS THAT THE GOVERNMENT  
5 IS PURSUING WAS IN OUR RULE 404(B) NOTICE, WHICH WE'VE BEEN  
6 PROVIDING SINCE THE OUTSET BUT SUMMARIZED ON MARCH 6TH, 2020.

7 SO WE WANT THE DEFENSE TO BE PREPARED. WE DON'T WANT THE  
8 DATE TO MOVE. I JUST DON'T THINK CHANGES IN THE CHARGING  
9 INSTRUMENT ARE ANY IMPEDIMENTS TO PROCEEDING IN OCTOBER.

10 AND I THINK IT'S IMPORTANT TO HIGHLIGHT THE CHANGES THAT  
11 THE GOVERNMENT PROVIDED TO MS. HOLMES. I THINK IT'S LIMITED TO  
12 EIGHT PARAGRAPHS OF THE INDICTMENT. WE ADD A SINGLE LINE IN  
13 PARAGRAPH 3 THAT SAYS "THERANOS INVESTORS INCLUDED INDIVIDUALS,  
14 ENTITIES, CERTAIN BUSINESS PARTNERS, MEMBERS OF ITS BOARD OF  
15 DIRECTORS, AND INDIVIDUALS AND ENTITIES WHO INVESTED THROUGH  
16 FIRMS FORMED FOR THE EXCLUSIVE PURPOSE OR PRIMARY PURPOSE OF  
17 INVESTING IN THERANOS'S SECURITIES."

18 WE THINK THESE WERE INVESTORS WHO WERE ALREADY IN THE CASE  
19 AND THAT THIS DOES NOT SUBSTANTIALLY CHANGE THE DYNAMIC OF A  
20 TRIAL.

21 THE OTHER CHANGES ARE TO PARAGRAPHS 10, 11, AND 12, AND IT  
22 SIMPLY IS CHANGING A DATE FROM 2010 TO 2013.

23 WE AMEND PARAGRAPH 16 TO MAKE A FURTHER ALLEGATION AND TO  
24 IDENTIFY CERTAIN BLOOD TESTS THAT ARE SPELLED OUT IN THE BILL  
25 OF PARTICULARS.

1 AND WE CHANGE TWO WIRE FRAUD COUNTS IN PARAGRAPHS 18 AND  
2 26 FROM PATIENTS 1 AND 2 TO BB AND ET.

3 THAT'S THE EXTENT OF THE CHANGES THAT THE GOVERNMENT IS  
4 PURSUING, AND WE DON'T THINK IT ALTERS THE LENGTH OF THE TRIAL  
5 OR REALLY CHANGES THE DYNAMIC THAT WE'RE LOOKING AT.

6 WITH RESPECT TO COVID-19, YOUR HONOR, I DON'T HAVE SPECIAL  
7 INSIGHT INTO WHAT THE WORLD IS GOING TO LOOK LIKE IN OCTOBER.  
8 WE HEARD THE COURT'S COMMENTS AT THE LAST CONFERENCE ABOUT THE  
9 DIFFICULTY OF SERVING SUMMONS AND LARGE GATHERINGS. WE'RE  
10 MINDFUL OF THAT.

11 WE THINK OCTOBER SEEMS FAR ENOUGH REMOVED FROM THAT AND  
12 THAT THE BETTER COURSE IS TO PLAN FOR THAT AND CHECK IN IN JULY  
13 IF WE NEED TO, BUT PLANNING FOR 2021 JUST SEEMS LIKE WE'RE  
14 PLANNING FOR FAILURE, AND I THINK THE BETTER COURSE IS TO SET  
15 THE DATE, WORK TOWARDS THAT, AND IF AGAINST ALL OF OUR HOPES  
16 THE WORLD IS NOT IN A DIFFERENT SITUATION IN OCTOBER, WE CAN  
17 REACT TO THAT.

18 BUT SETTING THE DATE OUT IN '21 JUST CREATES TOO MUCH  
19 UNCERTAINTY AND IS REALLY PLANNING FOR FAILURE.

20 SO FOR THESE REASONS WE THINK OCTOBER IS REASONABLE, AND  
21 WE THINK THE COURT SHOULD ORDER THAT DATE.

22 THE COURT: ALL RIGHT. THANK YOU.

23 LET ME ASK IN REGARDS TO THE POTENTIAL SUPERSEDING  
24 DOCUMENT, IF THE GRAND JURY DOES RETURN THE COUNTS AND THE  
25 CHANGES THAT YOU'RE SEEKING, DO YOU HAVE A THOUGHT AS TO AN

10:32AM 1 INCREASE IN WITNESSES, PRODUCTION OF DOCUMENTS, ET CETERA, HOW  
10:32AM 2 THAT MIGHT AFFECT THINGS?

10:32AM 3 MR. LEACH: IT CERTAINLY DOES NOT CHANGE FROM THE  
10:32AM 4 GOVERNMENT'S PERSPECTIVE WHO WE WERE INTENDING TO CALL IN THE  
10:32AM 5 TRIAL. I THINK THE TRIAL STAYS THE SAME LENGTH.

10:32AM 6 I THINK THERE ARE GOING TO BE WALGREENS, SAFEWAY AND BOARD  
10:32AM 7 OF DIRECTORS WITNESSES IN THIS TRIAL REGARDLESS, SO I DON'T  
10:32AM 8 THINK IT CHANGED THE WITNESSES.

10:32AM 9 AND AS I ALLUDED TO EARLIER, YOUR HONOR, WITH THE  
10:32AM 10 EXCEPTION OF POSSIBLY 302'S OR WITNESS STATEMENTS, I DO NOT  
10:33AM 11 ANTICIPATE ANY SUBSTANTIAL DISCOVERY, CERTAINLY NOTHING  
10:33AM 12 COMPARED TO THE 20 MILLION-PLUS DOCUMENTS THAT HAVE ALREADY  
10:33AM 13 BEEN PRODUCED IN THIS CASE. I THINK ANY REMAINING DISCOVERY  
10:33AM 14 WOULD BE VERY, VERY NEGLIGIBLE.

10:33AM 15 THE COURT: OKAY. THANK YOU VERY MUCH. ANYTHING  
10:33AM 16 FURTHER THEN?

10:33AM 17 MR. LEACH: NO, YOUR HONOR. THANK YOU.

10:33AM 18 THE COURT: OKAY. MR. WADE.

10:33AM 19 MR. WADE: THANK YOU, YOUR HONOR. THIS IS  
10:33AM 20 LANCE WADE ON BEHALF OF MS. HOLMES.

10:33AM 21 I WILL START WHERE THE COURT HAS AND AS THE COURT DIRECTED  
10:33AM 22 IN THE PRIOR HEARING WITH THE CURRENT HEALTH DIRECTIVES AND  
10:33AM 23 SOME OF OUR THINKING ON THAT AS THE COURT MADE THAT INQUIRY.  
10:33AM 24 AND WE, OF COURSE, THANK THE COURT FOR ITS CARE AND CONCERN  
10:33AM 25 ABOUT THESE ISSUES AND OF COURSE ITS THE DESIRE TO KEEP ALL

1 TRIAL PARTICIPANTS SAFE THROUGH THIS ENTIRE PROCESS.

2 WE'RE OBVIOUSLY IN UNCHARTERED TERRITORY HERE, YOUR HONOR,  
3 BOTH IN OUR DAILY LIVES AND IN OUR CURRENT OCCUPATIONS AND THIS  
4 HEARING.

5 I THINK NONE OF US, INCLUDING SOME OF THE LEADING PUBLIC  
6 HEALTH EXPERTS, REALLY KNOW WITH ANY DEGREE OF CERTAINTY WHAT  
7 THE SECOND HALF OF THIS YEAR WILL LOOK LIKE FROM A HEALTH  
8 PERSPECTIVE.

9 NO ONE HAS A CLEAR IDEA OF WHAT CONDUCT WILL BE DEEMED  
10 SAFE DURING THAT TIME PERIOD OR WHAT PUBLIC HEALTH AND SOCIAL  
11 DISTANCING GUIDANCE MAY BE NEEDED.

12 BY EXTENSION, OF COURSE, IT MAKES IT VERY DIFFICULT FOR  
13 US, AND I'M SURE FOR THE COURT, TO KNOW WHETHER THOSE  
14 CONDITIONS WILL BE CONDUCIVE TO A LENGTHY JURY TRIAL SUCH AS  
15 THE ONE CONTEMPLATED IN THIS MATTER.

16 WHILE THE PARTIES ARE, OF COURSE, YOU KNOW, IN COURT WITH  
17 GREAT FREQUENCY, THE COURT IS VASTLY MORE EXPERIENCED IN  
18 CONDUCTING ITS OWN PROCEDURES AND RECOGNIZES THE NUMBER OF  
19 CHANGES TO COURTROOM PROCEDURES AND PROTOCOLS THAT WILL BE  
20 NECESSARY TO TRY AND ADDRESS HEALTH RELATED ISSUES.

21 WE'RE CONFIDENT THAT THE COURT WILL DO THAT AND OF COURSE  
22 STAND PREPARED TO ASSIST THE COURT IN ANY WAY THAT WE CAN.

23 THERE'S NOTHING ABOUT THE PARTIES TO THIS CASE OR COUNSEL  
24 IN THIS CASE WITH RESPECT TO THESE HEALTH ISSUES THAT MERITS  
25 SPECIAL ATTENTION.

10:35AM 1 ALL FUTURE TRIAL PARTICIPANTS IN THIS COURT AND OTHER  
10:35AM 2 COURTS ARE GOING TO HAVE TO WRESTLE WITH THIS NEW POST-PANDEMIC  
10:35AM 3 WORLD IN HEARINGS AND JURY TRIALS WHEN OTHER COURT PROCEEDINGS  
10:36AM 4 RESUME. AGAIN, WE KNOW THE COURT WILL CONTINUE TO WORK TO  
10:36AM 5 PRIORITIZE THE HEALTH AND SAFETY OF ALL OF US WHO APPEAR BEFORE  
10:36AM 6 IT AS WE WORK TO ADAPT TO THAT NEW WORLD.

10:36AM 7 THERE ARE CERTAIN CIRCUMSTANCES RELATED TO THIS CASE,  
10:36AM 8 HOWEVER, THAT WE THINK HEIGHTEN THE HEALTH RISK.

10:36AM 9 AS THE COURT, AND THE GOVERNMENT UNDOUBTEDLY RECOGNIZED,  
10:36AM 10 THERE'S A GREATER RISK OF TRIAL DISRUPTION FROM THE VIRUS IN A  
10:36AM 11 TRIAL THAT OCCURS OVER THE COURSE OF 100 DAYS THAN A TRIAL THAT  
10:36AM 12 OCCURS OVER THE COURSE OF 1 OR 2. THAT FLOWS FROM BASIC MATH  
10:36AM 13 AND STATISTICAL PROBABILITY.

10:36AM 14 THE CROWDS THAT WILL LIKELY GATHER OUTSIDE OF THE  
10:36AM 15 COURTHOUSE IN THIS CASE AND THEN FILL THE COURTROOM, AS THEY  
10:36AM 16 HAVE IN NEARLY ALL PRIOR PROCEEDINGS, ADD TO THAT HEALTH RISK.

10:37AM 17 WHAT ALL PARTIES HERE IN THE COURT I AM SURE UNDOUBTEDLY  
10:37AM 18 WANT IS AS SAFE AND AS SMOOTH A TRIAL AS POSSIBLE, ONE FREE  
10:37AM 19 FROM DISRUPTION.

10:37AM 20 A MISTRIAL IS A REGRETTABLE EVENT IN ANY CIRCUMSTANCES,  
10:37AM 21 AND IT'S OF COURSE A MASS OF CONCERN AND A BURDEN FOR ALL  
10:37AM 22 INVOLVED WHEN THAT HAPPENS IN A LENGTHY TRIAL LIKE THIS.

10:37AM 23 WE CERTAINLY DON'T THINK IT'S PRUDENT TO START A TRIAL IF  
10:37AM 24 THE PUBLIC HEALTH ENVIRONMENT SUGGESTS THAT THERE'S A  
10:37AM 25 SUBSTANTIALLY INCREASED RISK OF A MISTRIAL.

10:37AM 1 THIS IS WHY IN OUR DISCUSSIONS WITH THE GOVERNMENT AND IN  
10:37AM 2 THE PLEADING THAT WE SAID BEFORE THE COURT AT DOCKET 372, WE  
10:37AM 3 ARTICULATED OUR BELIEF EVEN BEFORE THE CONCEPT OF A SUPERSEDING  
10:38AM 4 INDICTMENT WAS DISCUSSED THAT IT WOULD BE APPROPRIATE TO DELAY  
10:38AM 5 THE TRIAL UNTIL EARLY NEXT YEAR.

10:38AM 6 GIVEN THAT THE GOVERNMENT WAS RELUCTANT TO DO THAT, WE OF  
10:38AM 7 COURSE HAVE TRIED TO FIND A WAY WHERE WE CAN MAKE AN  
10:38AM 8 ACCOMMODATION THAT WOULD ACCOUNT FOR SOME OF THE PARTICULAR  
10:38AM 9 LIMITATIONS AND TRIAL PREPARATION THAT RESULTED FROM THE  
10:38AM 10 CURRENT CIRCUMSTANCES.

10:38AM 11 AS THE COURT KNOWS, AND WE'VE DISCUSSED IN PRIOR CALLS,  
10:38AM 12 THERE'S MUCH THAT WE CAN CONTINUE TO DO AND WE PLEDGE TO THE  
10:38AM 13 COURT THAT WE ARE CONTINUING TO WORK DILIGENTLY WITH ALL TASKS  
10:38AM 14 THAT WE CAN DO IN OUR CURRENT REMOTE WORKING ENVIRONMENT, BUT  
10:38AM 15 OF COURSE THERE ARE MANY TASKS THAT WE CAN'T DO TO PREPARE FOR  
10:38AM 16 TRIAL THAT REQUIRE ACTIVITIES THAT ARE ILL-ADVISED OR ILLEGAL  
10:38AM 17 GIVEN THE CURRENT CIRCUMSTANCES AND PUBLIC HEALTH CONDITIONS.

10:39AM 18 OUR SUGGESTION INITIALLY FOR THE 90-DAY DELAY WAS DONE  
10:39AM 19 WITH THE BELIEF -- TO LATE OCTOBER -- WAS DONE WITH THE BELIEF  
10:39AM 20 THAT A DELAY OF THAT PERIOD WOULD HELP US ACCOUNT FOR SOME OF  
10:39AM 21 THE LIMITATIONS THAT WE ARE UNDER IN THE REMOTE WORK AND  
10:39AM 22 CURRENT HEALTH ENVIRONMENT. THAT'S WHY WE PROPOSED THAT  
10:39AM 23 SCHEDULE.

10:39AM 24 WE RECOGNIZED WHEN WE PROPOSED THAT SCHEDULE, AND WE  
10:39AM 25 BELIEVE IT'S TRUE WITH ANY SCHEDULE THAT STARTS THAT LATE, THAT



10:39AM 1 THAT COULD PUSH US INTO A SITUATION WHERE WE'RE WORKING THROUGH  
10:39AM 2 THE HOLIDAYS.

10:39AM 3 WE, OF COURSE, IN NORMAL CIRCUMSTANCES WOULDN'T CONSIDER  
10:39AM 4 PROPOSING SOME STEPS, BUT WE RECOGNIZE THAT WE ARE IN  
10:40AM 5 EXTRAORDINARY TIMES, AND WE RECOGNIZE THAT IN TIMES SUCH AS  
10:40AM 6 THAT SACRIFICES ARE NEEDED. AND ENSURING THAT OUR CLIENT HAS  
10:40AM 7 AN APPROPRIATE DEFENSE, WE'RE PREPARED TO WORK THROUGH THE  
10:40AM 8 HOLIDAYS AS NEEDED IF THAT'S WHAT ENDS UP HAPPENING.

10:40AM 9 NOW, OF COURSE THAT, THAT PROPOSAL CHANGED WHEN THE  
10:40AM 10 GOVERNMENT INFORMED US AT THIS POINT THAT IT INTENDED TO SEEK A  
10:40AM 11 SUPERSEDING INDICTMENT.

10:40AM 12 AND WHILE I APPRECIATE THAT COUNSEL FOR THE GOVERNMENT  
10:40AM 13 DOESN'T BELIEVE IT WILL SIGNIFICANTLY INCREASE THEIR TRIAL  
10:40AM 14 PREPARATION TIME, I WILL MAKE CLEAR TO THE COURT THAT IF THE  
10:40AM 15 GRAND JURY CHOOSES TO RETURN A SUPERSEDING INDICTMENT ALONG THE  
10:41AM 16 LINES MR. LEACH HAS DISCLOSED THAT HE INTENDS TO SEEK, WHILE  
10:41AM 17 THE CHANGES IN LANGUAGE MAY BE LIMITED AND DESIGNED TO DO  
10:41AM 18 MINIMAL VIOLENCE TO THE WORDS WITHIN THE INDICTMENT, THE  
10:41AM 19 FUNDAMENTAL SCOPE OF THE INDICTMENT CHANGES SIGNIFICANTLY.

10:41AM 20 THE INDICTMENT, THE PROPOSED INDICTMENT, OR THE POTENTIAL  
10:41AM 21 SUPERSEDING INDICTMENT THAT MR. LEACH HAS STATED THAT THE  
10:41AM 22 GOVERNMENT INTENDS TO SEEK SIGNIFICANTLY EXPANDS THE TIME  
10:41AM 23 PERIOD THAT HAS BEEN THE FOCUS OF THE CASE. THE COMPANY DURING  
10:41AM 24 THE 2010 TO 2013 TIME PERIOD WAS IN A FUNDAMENTALLY DIFFERENT  
10:41AM 25 STATE OF OPERATIONS THAN IT WAS DURING THE LATER TIME PERIOD

10:41AM 1 THAT WAS IDENTIFIED IN THE PREVIOUS CONSPIRACY PERIOD. THE --  
10:42AM 2 ALTHOUGH THE GOVERNMENT HAS IN DRAFTING, IT APPEARS, INTENT ON  
10:42AM 3 CHANGING THE DEFINITION OF INVESTORS AND THE SCOPE OF THE  
10:42AM 4 INVESTOR RELATED CONSPIRACY TO INCLUDE OTHER PARTIES, IT DOES  
10:42AM 5 NOT APPEAR TO US, BASED ON WHAT HAS BEEN REPRESENTED BY THE  
10:42AM 6 GOVERNMENT, THAT THOSE ARE REALLY INVESTOR RELATIONSHIPS AT  
10:42AM 7 ALL.

10:42AM 8 IN FACT, THOSE RELATIONSHIPS, RELATIONSHIPS LIKE THE  
10:42AM 9 WALGREENS RELATIONSHIP, THE SAFEWAY RELATIONSHIP, RELATIONSHIPS  
10:42AM 10 WITH BOARD OF DIRECTORS ARE FUNDAMENTALLY DIFFERENT  
10:42AM 11 RELATIONSHIPS THAN INVESTOR RELATIONSHIPS.

10:42AM 12 WALGREENS, SAFEWAY ARE CONTRACTUAL COUNTERPARTIES WITH  
10:42AM 13 THERANOS. THE COURSE OF DEALING BETWEEN THERANOS AND THOSE  
10:42AM 14 CONTRACTUAL COUNTERPARTIES IS FUNDAMENTALLY DIFFERENT IN NATURE  
10:43AM 15 AND SCOPE FROM THE INVESTOR-RELATED RELATIONSHIPS THAT WERE  
10:43AM 16 OUTLINED IN THE PRIOR INDICTMENT.

10:43AM 17 THE INTERACTIONS WITH THE BOARD OF DIRECTORS ALSO  
10:43AM 18 SIMILARLY ARE INTERACTIONS BETWEEN MANAGEMENT AND BOARD MEMBERS  
10:43AM 19 AMONG FIDUCIARIES WITHIN THE COMPANY AND ARE OF A COMPLETELY  
10:43AM 20 DIFFERENT NATURE FROM THE ALLEGATIONS THAT WERE SET FORTH IN  
10:43AM 21 THE PRIOR INDICTMENT.

10:43AM 22 THEY REQUIRE A DIFFERENT LEVEL OF PREPARATION, THEY RAISE  
10:43AM 23 DIFFERENT LEGAL ISSUES, WHICH WILL REQUIRE ADDITIONAL MOTIONS  
10:43AM 24 SHOULD THE GRAND JURY RETURN AN INDICTMENT, AND FUNDAMENTALLY  
10:43AM 25 CHANGE THE NATURE OF OUR TRIAL PREPARATION.

1 I'LL SAY WITH A BIT OF FRUSTRATION THAT I WILL CONFESS TO  
2 THE COURT, ALTHOUGH MR. LEACH SUGGESTS THAT SOME OF THESE  
3 CHANGES FLOW FROM THE ORDER OF THE COURT AND THE MOTIONS TO  
4 DISMISS, WHICH OF COURSE WERE BRIEFED ON THE SCHEDULE THAT WAS  
5 AGREED TO BY ALL PARTIES AND PRESENTED AND APPROVED BY THE  
6 COURT, WHILE THOSE CHANGES MAY HAVE RESULTED WITH RESPECT TO  
7 THE NEW COUNTS RELATED TO THE PATIENTS, THE ORDER OF THE COURT  
8 HAS LITTLE OR NOTHING TO DO WITH THE EXPANSION OF THE  
9 INVESTOR-RELATED CONSPIRACY TO INCLUDE NEW THEORIES, NEW  
10 COUNTERPARTIES, NEW FIDUCIARIES, THAT HAVE LONG BEEN KNOWN TO  
11 THE GOVERNMENT AND WHICH THE GOVERNMENT HAS PREVIOUSLY CHOSEN  
12 NOT TO CHARGE.

13 WHY IT TOOK UNTIL THIS POINT TO ADD THOSE CHARGES TO THIS  
14 CASE IS UNCLEAR TO THE DEFENSE. IT'S OF SOME FRUSTRATION GIVEN  
15 ALL OF THE WORK THAT WE HAVE DONE THUS FAR.

16 AS THE COURT KNOWS, THERE ARE OVER 20 MILLION PAGES OF  
17 DOCUMENTS IN THIS CASE. MANY OF THOSE DOCUMENTS HAVE BEEN  
18 REVIEWED WITH THE CURRENT INDICTMENT IN MIND. MANY OF THOSE  
19 DOCUMENTS WILL NOW NEED TO BE REVIEWED. MANY OF THE WITNESSES  
20 WILL NEED TO BE REASSESSED. THE HUNDREDS OF WITNESS STATEMENTS  
21 WILL NEED TO BE REVIEWED AND ADDRESSED WITH THE NATURE OF THESE  
22 ALLEGATIONS IN MIND, AGAIN, SHOULD THE GRAND JURY CHOOSE TO  
23 RETURN THIS INDICTMENT AND SHOULD THE CHARGES SURVIVE A MOTION  
24 TO DISMISS.

25 THAT'S A SUBSTANTIAL AMOUNT OF WORK ABOVE AND BEYOND THE

1 WORK THAT HAS PREVIOUSLY BEEN BEFORE US IN THIS MATTER.

2 FORTUNATELY, PERHAPS MAYBE ONE OF THE FEW UNFORTUNATE  
3 THINGS THAT HAS COME FROM THE CURRENT HEALTH CRISIS, WE BELIEVE  
4 THAT WE CAN STILL DO THAT WITHIN THIS AMOUNT OF TIME IN ADVANCE  
5 OF EARLY 2021 WHEN WE THINK IT'S SENSIBLE TO PROCEED WITH THIS  
6 MATTER IN ANY EVENT.

7 BUT WE THINK THE MINIMIZATION OF THESE ALLEGATIONS BY THE  
8 GOVERNMENT IS ONE WITH WHICH WE RESPECTFULLY DISAGREE AND ONE  
9 THAT REQUIRES SIGNIFICANTLY ADDITIONAL TIME.

10 THERE -- IT IS TRUE THAT SOME OF THESE RELATIONSHIPS WERE  
11 PREVIOUSLY ADDRESSED WITHIN THE INDICTMENT. WALGREENS, FOR  
12 EXAMPLE, IS SET FORTH IN THE INDICTMENT WITH THE ALLEGATION  
13 BEING THAT SOME OF THE DEALINGS WITH RESPECT TO WALGREENS WERE  
14 MISREPRESENTED TO OTHER INVESTORS.

15 THE NEW ALLEGATIONS WITHIN THE INDICTMENT ARE TOTALLY  
16 DIFFERENT. THERANOS IS SUGGESTING THAT WALGREENS ITSELF MAY  
17 HAVE BEEN DEFRAUDED IN SOME WAY.

18 WE, OF COURSE, WILL AGGRESSIVELY CONTEST THOSE  
19 ALLEGATIONS, BUT THE TYPE OF PREPARATION REQUIRED TO DO SO IS  
20 FUNDAMENTALLY DIFFERENT FROM THE PREPARATION THAT WE HAVE  
21 ENGAGED IN THUS FAR.

22 I'LL PAUSE THERE AND ASK IF THE COURT HAS ANY INQUIRIES,  
23 I'M HAPPY TO ADDRESS THEM.

24 THE COURT: ALL RIGHT. THANK YOU, MR. WADE. THANK  
25 YOU FOR OUTLINING THE CHALLENGES THAT THE DEFENSE MIGHT FACE

10:47AM 1 SHOULD THE GOVERNMENT DECIDE TO SEEK A SUPERSEDING INDICTMENT.

10:47AM 2 I'M GOING TO ASK PEOPLE TO PLEASE MUTE YOUR PHONES, PLEASE  
10:47AM 3 MUTE YOU'RE PHONES.

10:47AM 4 THANK YOU, MR. WADE.

10:48AM 5 ONE OF THE THOUGHTS AND CONCERNS THAT I HAVE ABOUT THE  
10:48AM 6 INFORMATION FROM THE GOVERNMENT THAT THEY MAY SEEK TO SUPERSEDE  
10:48AM 7 THE INDICTMENT IS THE TIMING OF THAT. AND THIS IS AGAIN  
10:48AM 8 SPECULATION, ASSUMING THAT OUR COURT IS BACK IN OPERATION, THAT  
10:48AM 9 IS, THE COURTHOUSE IS OPEN MAY 1ST, IN MAY THE GOVERNMENT WOULD  
10:48AM 10 THEN, I'M SURE THEY WOULD PROCEED WITH ALL HASTE TO GET THE  
10:48AM 11 GRAND JURY CONVENED AND PRESENT THIS AND THEN WE WOULD HAVE A  
10:48AM 12 RETURN.

10:48AM 13 I DON'T KNOW WHAT THE TIMELINE OF THAT POTENTIALLY IS, BUT  
10:48AM 14 OF COURSE BASED ON MR. WADE'S COMMENTS, AND IT'S COMMON  
10:48AM 15 KNOWLEDGE THAT WE WOULD EXPECT THAT ANY SUPERSEDING INDICTMENT  
10:48AM 16 WOULD BE LOOKED AT BY THE DEFENSE WITH CLOSE SCRUTINY AND THEN  
10:48AM 17 POTENTIAL MOTIONS TO DISMISS OR SOME OTHER MOTIONS MIGHT ARISE  
10:48AM 18 FROM THAT.

10:48AM 19 YOU'VE GIVEN ME A PROPOSED SCHEDULE IN DOCUMENT 372, AND  
10:48AM 20 I'M JUST CURIOUS ABOUT WHAT -- LET'S JUST ASSUME THAT A  
10:49AM 21 SUPERSEDING INDICTMENT IS RECEIVED ALONG THE LINES THAT THE  
10:49AM 22 GOVERNMENT HAS PROPOSED.

10:49AM 23 I WONDER FROM BOTH SIDES, CAN YOU GIVE ME YOUR THOUGHTS  
10:49AM 24 ABOUT MOTION PRACTICE IN REGARDS TO THAT AND HOW THAT, THAT IS,  
10:49AM 25 HOW THAT MOTION PRACTICE FITS INTO THE CURRENT PROPOSED

10:49AM 1 SCHEDULES THAT YOU'VE PRESENTED?

10:49AM 2 MR. LEACH, I'M NOT SURE YOU HAVE SUFFICIENT INFORMATION TO  
10:49AM 3 ANSWER THAT QUESTION BECAUSE THE MOTION PRACTICE WOULD BE  
10:49AM 4 GENERATED, OF COURSE, BY THE DEFENSE, BUT I'M HAPPY TO START  
10:49AM 5 WITH YOU IF YOU HAVE SOME THOUGHTS ON THAT.

10:49AM 6 MR. LEACH: THANK YOU, YOUR HONOR.

10:49AM 7 THAT'S RIGHT, I DON'T HAVE A SENSE OF WHAT MOTIONS THEY  
10:49AM 8 INTEND, AND SO I'M NOT REALLY IN A POSITION TO TALK ABOUT THE  
10:49AM 9 TIMING OF THAT.

10:50AM 10 I DO THINK UNDER THE SCHEDULE PROPOSED BY THE GOVERNMENT  
10:50AM 11 WE HAVE MOTIONS IN LIMINE NOT STARTING UNTIL AUGUST, AND WE  
10:50AM 12 HAVE A STATUS CONFERENCE FOR JULY 13TH.

10:50AM 13 I WOULD CERTAINLY THINK THAT -- I MEAN, WE HAVE BEEN AS  
10:50AM 14 TRANSPARENT ABOUT -- BY PROVIDING THE SUPERSEDING, DRAFT  
10:50AM 15 SUPERSEDING INFORMATION ABOUT WHAT THE GOVERNMENT'S INTENTIONS  
10:50AM 16 ARE.

10:50AM 17 I WOULD THINK THAT THE DEFENSE HAS IN MIND WHAT THEY WANT  
10:50AM 18 TO DO.

10:50AM 19 I THINK IF WE HAVE A MID-JULY, LATE JULY STATUS CONFERENCE  
10:50AM 20 THAT SHOULD AFFORD SUFFICIENT TIME FOR THEM TO DRAFT THE  
10:50AM 21 GOVERNMENT'S RESPONSE ANYTHING THAT THEY THINK IS APPROPRIATE.  
10:50AM 22 I REALLY DON'T HAVE A SENSE OF WHAT THEY HAVE IN MIND, BUT WE  
10:50AM 23 WOULD BE PREPARED TO PROCEED UNDER WHATEVER SCHEDULE THE COURT  
10:50AM 24 THINKS IS APPROPRIATE FOR THIS.

10:50AM 25 THE COURT: OKAY. THANK YOU.

10:51AM 1 THAT'S A THOUGHT THAT CAME TO MIND, MR. WADE -- I'LL NEXT  
10:51AM 2 CALL UPON YOU -- IS IF THE GOVERNMENT PROCEEDED -- WELL,  
10:51AM 3 THERE'S A LOT OF "IF'S" HERE. ASSUMING WE'RE BACK IN THE  
10:51AM 4 COURTHOUSE IN MAY AND THE GOVERNMENT IS DILIGENT ABOUT  
10:51AM 5 CONVENING A GRAND JURY, AND THE GRAND JURY DOES RETURN A  
10:51AM 6 SUPERSEDING DOCUMENT AS THEY'VE INDICATED, AND AS THEY'VE  
10:51AM 7 PROVIDED TO YOU, THE NEXT THOUGHT I HAVE REGARDING SCHEDULING  
10:51AM 8 IS WHAT ARE YOUR THOUGHTS ABOUT GETTING MOTION PRACTICE AS TO  
10:51AM 9 THAT SUPERSEDING DOCUMENT COMPLETED BY THE JULY, ASSUMING WE  
10:51AM 10 FOLLOW A JULY, A LATE JULY STATUS CONFERENCE?

10:51AM 11 MR. WADE: YOUR HONOR, OF COURSE THE WAY THAT WE  
10:51AM 12 USUALLY APPROACH A SCHEDULE IN A CASE IS TO START WITH WHEN WE  
10:52AM 13 THINK BASED UPON THE INDICTMENT WHEN A TRIAL DATE -- WHEN WE  
10:52AM 14 COULD BE READY FOR TRIAL AND WE TRY TO WORK BACK AND SET A  
10:52AM 15 LOGICAL AND SEQUENTIAL PATH BETWEEN THAT TRIAL DATE AND TO HIT  
10:52AM 16 ALL OF THESE ITEMS.

10:52AM 17 A SUPERSEDING INDICTMENT THAT IS RETURNED, IF THE GRAND  
10:52AM 18 JURY RETURNS IN MAY, AND I'LL NOTE THAT I DO HAVE MATTERS IN  
10:52AM 19 OTHER COURTS WHERE GRAND JURIES WERE INITIALLY EXTENDED UNTIL  
10:52AM 20 MAY, BUT THAT'S NOW BEEN -- THOSE GRAND JURIES HAVE NOW BEEN  
10:52AM 21 DEFERRED FURTHER INTO JULY. BUT IF IT COMES IN MAY, YOU KNOW,  
10:52AM 22 WE WOULD OBVIOUSLY NEED TIME TO ADDRESS TO CONSIDER THAT.

10:52AM 23 WE'LL, OF COURSE, BASED ON THE REPRESENTATIONS OF THE  
10:52AM 24 GOVERNMENT, BEGIN THINKING ABOUT WAYS IN WHICH WE MIGHT  
10:52AM 25 APPROACH SUCH CHARGES IF THE GRAND JURY DECIDES TO CONVENE THEM

10:53AM 1 OR TO RETURN THEM.

10:53AM 2 BUT THERE ARE A NUMBER OF OTHER, YOU KNOW, RELATED ISSUES  
10:53AM 3 THAT COME INTO THE CASE AS A RESULT OF THAT ACTIVITY THAT WOULD  
10:53AM 4 ALSO NEED TO BE ACCOMMODATED IN THE SCHEDULE.

10:53AM 5 THERE'S A POTENTIAL NEED FOR SUBSTANTIAL ADDITIONAL WORK  
10:53AM 6 THAT WOULD BE REQUIRED BY THE DEFENSE BASED ON INFORMATION  
10:53AM 7 PROVIDED TO THE GOVERNMENT AS TO WHAT THEY MIGHT SEEK. WE  
10:53AM 8 BELIEVE WE MAY NEED TO RETAIN AN EXPERT OR MORE GIVEN THE  
10:53AM 9 NATURE OF SOME OF THE ALLEGATIONS.

10:53AM 10 MANY OF THE PEOPLE WHO THE GOVERNMENT HAS IDENTIFIED, MANY  
10:53AM 11 OF THE WITNESSES WHO HAVE BEEN IDENTIFIED WHO WOULD BE  
10:53AM 12 IMPLICATED BY AN INDICTMENT OF THIS TYPE WE HAVE NOT  
10:53AM 13 SUBPOENAED, WE HAVE NOT SOUGHT DOCUMENTS, WE HAVE NOT DONE WHAT  
10:54AM 14 WE WOULD DO IN AN ORDINARY COURSE IF THESE ALLEGATIONS WERE IN  
10:54AM 15 THE INDICTMENT.

10:54AM 16 SO OF COURSE NOW IT'S NOT PRUDENT GIVEN HEALTH CONDITIONS  
10:54AM 17 TO PROCEED WITH SOME OF THOSE SUBPOENAS UNLESS PEOPLE WERE TO  
10:54AM 18 ACCEPT THEM VOLUNTARILY.

10:54AM 19 SO THERE ARE A NUMBER OF THINGS THAT NEED TO HAPPEN. I  
10:54AM 20 THINK WE UNDOUBTEDLY COULD TRY TO MEET AND CONFER WITH THE  
10:54AM 21 GOVERNMENT AND WOULD IN ANY COURSE ONCE WE DETERMINE A  
10:54AM 22 REASONABLE TRIAL DATE TO TRY TO SET A SENSIBLE SCHEDULE, BUT I  
10:54AM 23 THINK TRYING TO INJECT THIS INTO THESE ALREADY DIFFICULT  
10:54AM 24 CIRCUMSTANCES WOULD NECESSITATE A DELAY IN THE VIEW OF THE  
10:54AM 25 DEFENSE.



(PAUSE IN PROCEEDINGS.)

MR. WADE: IS THE COURT STILL THERE?

THE COURT: I AM STILL HERE, BUT YOU KNOW WHAT, I DID NOT HAVE THE GOOD SENSE TO UNMUTE MY PHONE.

THANK YOU. SO THANK YOU, MR. WADE. THANK YOU FOR THAT.

WHAT I HEAR YOU SAYING IS THAT SHOULD THE GOVERNMENT PROCEED AND SECURE A SUPERSEDING INDICTMENT ALONG THE LINES OF THE PROPOSED DRAFT THAT THEY HAVE PROVIDED YOU, IT WOULD CHANGE THE COMPLEXION OF YOUR -- OBVIOUSLY OF WHAT YOU NEED TO DO. YOU WOULD LOOK AT THE CASE AND DETERMINE WHETHER YOU CAN GO FORWARD WITH FILING MOTIONS, YOUR MOTIONS PRIOR TO THE JULY DATE AND THE STATUS DATE THAT WE HAVE.

THAT'S WHAT I'M TRYING TO SEE IF WE CAN, IF WE CAN GET MOTION PRACTICE SCHEDULED AND HEARD BY THAT DATE, THAT WOULD BE IDEAL AT LEAST FOR MOVING FORWARD.

I WAS PROBING TO SEE IF THAT -- OF COURSE YOU CAN'T PREDICT ANYTHING AND YOU DON'T HAVE BENEFIT OF ANYTHING IN FRONT OF YOU. I DON'T KNOW IF THAT'S SOMETHING THAT WE CAN DO.

MR. WADE: YEAH. MY APOLOGIES. IT'S DIFFICULT SOMETIMES TO NOT INTERRUPT THE COURT IN THIS FORUM. SO MY APOLOGIES TO THE COURT.

THE COURT: NO, NO, NOT AT ALL.

MR. WADE: THE -- WE, OF COURSE, WOULD WORK TO PROCEED WITH MOTIONS DIRECTED AT ANY NEW INDICTMENT AS QUICKLY AS WE POSSIBLY COULD, YOUR HONOR, JUST TO BE CLEAR.

10:57AM 1 MY OTHER COMMENTS ARE JUST DIRECTED -- AND TO THE EXTENT  
10:57AM 2 THAT AN INDICTMENT WAS RETURNED, YOU KNOW, REASONABLY IN  
10:57AM 3 ADVANCE OF THE JULY STATUS CONFERENCE, WE WOULD CERTAINLY  
10:57AM 4 ENDEAVOR TO TRY TO FIT BRIEFING IN IN ADVANCE OF THAT.

10:57AM 5 MY OTHER COMMENTS WERE MERELY DIRECTED -- MEANT TO DIRECT  
10:57AM 6 THE COURT'S ATTENTION TO THE FACT THAT THERE IS OBVIOUSLY MUCH  
10:57AM 7 MORE THAT IS NEEDED HERE BEYOND JUST THE BRIEFING ON THE MOTION  
10:57AM 8 TO DISMISS.

10:57AM 9 THE COURT: SURE. THANK YOU.

10:57AM 10 ALL RIGHT. THANK YOU. LET ME ASK, MR. LEACH, ANYTHING  
10:57AM 11 YOU WOULD LIKE TO SAY ABOUT THE SCHEDULING ISSUE REGARDING THE  
10:57AM 12 MOTIONS AND THE SUPERSEDING INDICTMENT?

10:57AM 13 MR. LEACH: NO, YOUR HONOR. JUST THAT I  
10:57AM 14 FUNDAMENTALLY DISAGREE THAT THIS IS A SEA CHANGE. THIS IS THE  
10:57AM 15 SAME THEORY AND THE SAME CASE WITH DISCOVERY THAT THEY'VE HAD  
10:58AM 16 FOR THE BETTER PART OF A YEAR AND A HALF.

10:58AM 17 THE DEFENSE IS IN A MUCH BETTER POSITION TO DESCRIBE ITS  
10:58AM 18 PREPARATION THAN WE ARE, BUT WE FUNDAMENTALLY JUST DO NOT SEE  
10:58AM 19 THIS AS THE SEA CHANGE THAT IS DESCRIBED. AND -- BUT BEYOND  
10:58AM 20 THAT, I HAVE NOTHING FURTHER.

10:58AM 21 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10:58AM 22 MR. WADE, ANYTHING ELSE YOU WOULD LIKE TO ADD?

10:58AM 23 MR. WADE: NO, YOUR HONOR.

10:58AM 24 THE COURT: ALL RIGHT. WELL, THANK YOU VERY MUCH.

10:58AM 25 THE STATUS HEARING TODAY WAS SCHEDULED TO DETERMINE WHAT

10:58AM 1 WE SHOULD DO GOING FORWARD IN LIGHT OF THE COVID CRISIS THAT  
10:58AM 2 THE NATION FACES AND IN LIGHT OF THE LIMITATIONS THAT THAT  
10:58AM 3 BRINGS TO THIS COURT TO PROVIDE SAFE ENVIRONMENTS FOR ALL  
10:58AM 4 PARTIES TO THE CASE AS WELL AS THE PUBLIC AND ALL OF OUR COURT  
10:58AM 5 PERSONNEL AS WELL.

10:59AM 6 WE HAVE, AS I THINK SOMEONE SAID, WE'RE IN UNCHARTERED  
10:59AM 7 WATERS NOW AND TERRITORY NOW IN REGARDS TO HOW TO MANAGE OUR  
10:59AM 8 CALENDARS. WE KNOW THAT THE PRIME DIRECTIVE IS TO ENSURE THAT  
10:59AM 9 ALL PARTIES RECEIVE FAIR TREATMENT IN THE COURTS, BUT THE REAL  
10:59AM 10 PRIME DIRECTIVE NOW ADDENDUM TO THAT IS TO PROCEED WITH CAUTION  
10:59AM 11 AND SAFETY TO MAKE SURE THAT EVERYONE WHO ENTERS OUR COURTS ARE  
10:59AM 12 SAFE, FIRST OF ALL. THAT WE OPEN OUR COURTS, WHEN WE OPEN OUR  
10:59AM 13 COURTS, THAT THEY ARE IN A SAFE ENVIRONMENT FOR ALL, ALL  
10:59AM 14 CONCERNED, INCLUDING THE PUBLIC, THE PUBLIC WHO WE WOULD CALL  
10:59AM 15 AS JURORS TO SIT IN THE MATTER. AND WE WANT TO MAKE SURE THAT  
10:59AM 16 THE JURORS HAVE CONFIDENCE THAT THE COURTROOMS THAT THEY'RE  
10:59AM 17 SITTING IN --

10:59AM 18 THE CLERK: EXCUSE ME, YOUR HONOR. I BELIEVE  
10:59AM 19 SOMEONE NEEDS TO MUTE THEIR PHONE. THERE'S INTERRUPTION GOING  
11:00AM 20 ON. IF YOU COULD PLEASE MUTE YOUR PHONE.

11:00AM 21 THE COURT: YES, YES. PLEASE MUTE YOUR PHONES,  
11:00AM 22 PLEASE. THANK YOU.

11:00AM 23 THE CLERK: SORRY, YOUR HONOR.

11:00AM 24 THE COURT: THANK YOU. THANK YOU, MS. KRATZMANN.

11:00AM 25 WE NEED TO MAKE SURE THE ENVIRONMENT IS SAFE FOR ALL

11:00AM 1 PARTIES, WE NEED TO ENSURE TO OUR JURORS, THE PUBLIC THAT WE  
11:00AM 2 CALL, THE COMMUNITY THAT IS CALLED TO HEAR MATTERS, THAT THE  
11:00AM 3 COURT CAN ENSURE THEIR SAFETY SUCH THAT THEY HAVE CONFIDENCE IN  
11:00AM 4 THEIR JUSTICE SYSTEM AND THEY HAVE CONFIDENCE THAT THEY CAN  
11:00AM 5 FOCUS ON THE ISSUES BEFORE THEM IN A TRIAL SUCH THAT THEY CAN  
11:00AM 6 PROVIDE A FAIR HEARING FOR ALL SIDES. THAT'S A CRITICAL  
11:00AM 7 COMPONENT OF THE WORK THAT THEY DO AND WHAT WE WANT TO ENSURE  
11:00AM 8 TO THE JURY IN THIS CASE.

11:00AM 9 I DO THINK THAT LOOKING AT OUR SCHEDULE AND THIS COURT HAS  
11:00AM 10 BEEN, AND I KNOW COUNSEL HAVE CALLED ME ON IT, IS I'VE BEEN A  
11:01AM 11 LITTLE AGGRESSIVE ABOUT THE TRIAL SCHEDULE ON THIS. I DO THINK  
11:01AM 12 THAT THE SCHEDULE FOR JULY AS I INITIALLY PROPOSED IS NOT  
11:01AM 13 REALISTIC NOW GIVEN THE CIRCUMSTANCES THAT WE FACE. I JUST  
11:01AM 14 DON'T THINK THAT THAT'S A REALITY.

11:01AM 15 I'D LIKE TO THINK THAT, AND I HOPE THAT TRIAL IN OCTOBER  
11:01AM 16 OF THIS YEAR IS SOMETHING THAT WE COULD, WE COULD ENGAGE. I  
11:01AM 17 KNOW EVERY DAY THE NEWS CHANGES ABOUT COVID AND ABOUT WHETHER  
11:01AM 18 OR NOT THINGS WILL BEGIN TO REACH NORMALITY AND THAT DOESN'T  
11:01AM 19 MEAN THAT WE'LL HAVE ANY NORMAL SENSE OF OUR SOCIETY IN  
11:01AM 20 OCTOBER. WE HOPE WE DO, BUT SHELTER IN PLACE REMAINS AND IN  
11:01AM 21 MANY STATES, AND CERTAINLY IN THE ENVIRONMENT AND JURISDICTION  
11:01AM 22 OF THE COURTHOUSE.

11:01AM 23 I'D LIKE TO -- WHAT I'D LIKE TO DO IS LOOK AT THE OCTOBER  
11:02AM 24 DATE, THE LATER OCTOBER DATE THAT WAS PROPOSED AS A POTENTIAL  
11:02AM 25 TRIAL DATE, AND I THINK IT WISE, AND I'M GRATEFUL TO BOTH SIDES

11:02AM 1 HERE, TO SUGGEST THAT WE HAVE AN INTERIM STATUS CONFERENCE IN  
11:02AM 2 JULY AT LEAST CALENDARED. THAT'S NOT TO SAY THAT WE WON'T  
11:02AM 3 ADVANCE THAT IF NEEDED, BUT AT LEAST CALENDARED IN JULY SO WE  
11:02AM 4 CAN LOOK FORWARD AND SEE WHAT AND HOW BEST WE CAN FORECAST  
11:02AM 5 WHETHER OR NOT THE OCTOBER DATE IS A REALITY OR WHETHER OR NOT  
11:02AM 6 IT MAKES MORE SENSE TO LOOK BEYOND THE FALL AND INTO THE NEW  
11:02AM 7 YEAR, EARLY NEW YEAR.

11:02AM 8 WHAT I THINK WE HAVE ALL READ AND FROM EXPERTS, AND THERE  
11:02AM 9 ARE MANY OF THEM ON THIS CRISIS THAT WE FACE, THE INFORMATION  
11:02AM 10 AT LEAST THAT THE COURT HAS READ AND SOME OF IT HAS INDICATED  
11:02AM 11 THAT LIKE THE NORMAL FLU VIRUS THAT SEEMS TO COME AROUND IN THE  
11:03AM 12 WINTER AND FALL, THERE'S AN EXPECTATION THAT THIS COVID MAY  
11:03AM 13 RETURN IN THE FALL IN SOME MANNER AND WE SHOULD BE COGNIZANT OF  
11:03AM 14 THAT.

11:03AM 15 WE'RE SO GRATEFUL FOR OUR HEALTH CARE PROFESSIONALS AND  
11:03AM 16 ALL OF THOSE SCIENTISTS AND BIOENGINEERS WHO ARE WORKING  
11:03AM 17 DILIGENTLY TO TRY AND TO FIND SOME TYPE OF SERUM THAT CAN  
11:03AM 18 PROTECT ALL OF US, A VACCINE THAT CAN PROTECT ALL OF US FROM  
11:03AM 19 THIS DISEASE.

11:03AM 20 BUT WE ALL KNOW THAT TAKES TIME, IT DOES TAKE TIME.

11:03AM 21 WE DON'T KNOW -- WE CAN'T FORECAST WHAT THE HEALTH  
11:03AM 22 CONDITIONS OF THIS COUNTRY WILL BE IN RELATION TO COVID. WE  
11:03AM 23 ALL, WE JUST ARE IN DESPAIR WHEN WE READ ABOUT THE LOSS THAT  
11:03AM 24 THIS COVID HAS CAUSED ACROSS THE COUNTRY. WE REALLY ARE -- OUR  
11:04AM 25 HEARTS ARE IN PAIN WHEN WE READ ABOUT NEW YORK, DETROIT, AND

11:04AM 1 OTHER CITIES, LOUISIANA, AND OTHER CITIES. SO WE'RE MINDFUL OF  
11:04AM 2 THAT. AND THAT PRESSES UPON ALL OF US AS WE LOOK FORWARD TO  
11:04AM 3 WHAT WE CAN DO WITH OUR CASE.

11:04AM 4 SO LET ME SAY WHAT I THINK WHAT I'D LIKE TO DO IS TO SET A  
11:04AM 5 DATE FOR TRIAL, RESCHEDULE THE TRIAL DATE TO THE OCTOBER 26TH  
11:04AM 6 DATE. I HAVE YOUR SCHEDULE IN DOCUMENT 372. I DO THINK THAT  
11:04AM 7 WE SHOULD MAKE SOME CHANGES TO THAT SCHEDULE GOING FORWARD.

11:04AM 8 FOLKS, IF YOU HAVE YOUR SCHEDULES IN FRONT OF YOU, I'D  
11:04AM 9 LIKE TO GO DOWN SOME OF THE DATES AND DEADLINES AND EVENTS THAT  
11:04AM 10 YOU HAVE AND SUGGEST SOME CHANGES TO THAT.

11:05AM 11 THE CLERK: YOUR HONOR, MAY I JUST INTERJECT A  
11:05AM 12 MOMENT?

11:05AM 13 THE COURT: YES. YES.

11:05AM 14 THE CLERK: THIS IS ADRIANA. COULD WE SET THE  
11:05AM 15 OCTOBER DATE TO OCTOBER 27TH DATE TO TUESDAY?

11:05AM 16 THE COURT: YES, YES. OCTOBER 27TH AT 9:00 A.M. FOR  
11:05AM 17 JURY SELECTION.

11:05AM 18 GOING DOWN. THIS IS FOUND ON PAGES 4 AND 5 OF 372. I DO  
11:05AM 19 NOTE THAT LET'S START THAT THERE'S AGREEMENT ON THE FIRST  
11:05AM 20 SERVICE OF THE SUMMARY PURSUANT TO RULE 16, AND I'M NOT GOING  
11:05AM 21 TO DISTURB THAT AT THIS POINT. WE MAY HAVE SOME OTHER COMMENT  
11:05AM 22 ON THAT IN A MOMENT.

11:06AM 23 THE GOVERNMENT IN IT'S RULE 16(A) DISCLOSURES WHICH BEGINS  
11:06AM 24 ON LINE 26, I THINK THE DATE, WHAT I'D LIKE TO DO IS TO ADOPT  
11:06AM 25 THE GOVERNMENT DATE ON THAT.

11:06AM 1 I'M LOOKING IN THAT BOX, AND PERHAPS YOU CAN HELP ME,  
11:06AM 2 COUNSEL, LINE 27 AND 28 IT INDICATES THE GOVERNMENT SERVE  
11:06AM 3 WITNESSES AND EXHIBITS LISTS FOR CASE-IN-CHIEF.

11:06AM 4 WAS THAT THE SAME PROPOSED DATE?

11:06AM 5 MR. LEACH: YEAH, THAT WAS INTENDED TO BE JUNE 26TH,  
11:06AM 6 2020.

11:06AM 7 THE COURT: OKAY. AS WELL AS PAGE 5 BEGINNING AT  
11:06AM 8 LINE 1, THE 801 --

11:06AM 9 MR. LEACH: YES.

11:06AM 10 THE COURT: OKAY. THANK YOU.

11:06AM 11 THEN ALSO ON THE RULE 16B DISCLOSURES ON LINE 3 I'LL ADOPT  
11:06AM 12 THE GOVERNMENT'S DATE TO THE LATER DATE OF JULY 6TH ON THAT.

11:06AM 13 THE NEXT BOX, WHICH APPEARS ON LINE 4 THROUGH 6, I'M GOING  
11:07AM 14 TO DEFER THAT FOR NOW.

11:07AM 15 ACTUALLY, THE FIRST BOX THAT I TALKED ABOUT, I'M SORRY TO  
11:07AM 16 GO BACK, ON PAGE 4, LINE 23, I'M GOING TO DEFER THAT AS WELL  
11:07AM 17 FOR NOW.

11:07AM 18 RETURNING TO PAGE 5, NOW WE'RE AT LINE 6 THROUGH 8, THE  
11:07AM 19 DEFENSE SERVICE OF WITNESS AND EXHIBIT LISTS, I'M GOING TO  
11:07AM 20 ADJUST THAT DATE TO JULY 24TH.

11:07AM 21 AND THEN THE STATUS CONFERENCE WILL BE SET FOR,  
11:07AM 22 MS. KRATZMANN, JULY 20TH, JULY 20TH, AT 10:00 A.M.

11:07AM 23 NOW, AT THAT TIME ON JULY 20TH, WE WILL HAVE A BETTER IDEA  
11:08AM 24 AS TO WHETHER WE'RE GOING TO GO FORWARD WITH THE OCTOBER TRIAL  
11:08AM 25 DATE OR WHETHER WE NEED TO ADJUST THE SCHEDULE IN SOME OTHER

11:08AM 1 MANNER.

11:08AM 2 I'M NOT GOING TO -- AT THIS TIME I'M NOT GOING TO  
11:08AM 3 ADOPT ANY OF THE OTHER -- YOU HAVE OTHER DATES THAT BEGIN IN  
11:08AM 4 AUGUST AND OTHERS AND MOTIONS IN LIMINES AND THOSE DATES. I'D  
11:08AM 5 LIKE TO DEFER THOSE DATES. I THINK WE CAN WAIT UNTIL THE  
11:08AM 6 JULY 20TH DATE TO SEE WHETHER OR NOT AND HOW WE'RE GOING TO  
11:08AM 7 PROCEED AND GO FORWARD THERE.

11:08AM 8 SO I'D LIKE YOU TO -- OBVIOUSLY YOU'RE GOING TO PREPARE  
11:08AM 9 THE CASE AS BEST YOU CAN, I KNOW THAT, BUT I DON'T THINK YOU  
11:08AM 10 NEED TO PAY ATTENTION TO THOSE ITEMS THAT APPEAR FROM LINES 10  
11:08AM 11 DOWN TO 19 AT THIS POINT. I'D LIKE YOU TO FOCUS YOUR EFFORTS,  
11:08AM 12 OF COURSE, ON THE OTHER WORK THAT YOU NEED TO DO, AND WE CAN  
11:08AM 13 LOOK AT THOSE REMAINING ISSUES, THE IN LIMINE AND OTHER ISSUES,  
11:09AM 14 ON THE JULY 20TH STATUS CONFERENCE DATE.

11:09AM 15 ANY QUESTIONS FROM EITHER SIDE ABOUT THIS ADJUSTMENT?

11:09AM 16 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.  
11:09AM 17 THAT'S CLEAR TO US. THANK YOU.

11:09AM 18 THE COURT: MR. WADE?

11:09AM 19 MR. WADE: NO, YOUR HONOR. I TAKE IT AS WE GET  
11:09AM 20 CLOSER TO THESE EVENTS WE'LL PERHAPS HAVE COMMUNICATION THROUGH  
11:09AM 21 MS. KRATZMANN AS TO WHETHER THESE PROCEEDINGS WILL BE  
11:09AM 22 TELEPHONIC OR IN PERSON?

11:09AM 23 OBVIOUSLY, I THINK WE ALL HOPE WE'RE IN A SITUATION WHERE  
11:09AM 24 THEY'RE IN PERSON, BUT WE WILL SEE WHAT IS PRUDENT AT THAT  
11:09AM 25 TIME.



11:09AM 1 THE COURT: YES. THANK YOU, MR. WADE.

11:09AM 2 I'M HOPEFUL THAT WE CAN, THAT THINGS CHANGE IN OUR COUNTRY  
11:09AM 3 AND IN OUR REGIONS THAT WE COULD HAVE IN-PERSON MEETINGS.

11:09AM 4 AGAIN, I'LL JUST SAY I ALWAYS ENJOY ALL OF YOU IN THE  
11:10AM 5 COURTROOM. YOU'RE ALL PROFESSIONAL, AND I APPRECIATE THAT. I  
11:10AM 6 KNOW THAT YOU'RE TRIAL LAWYERS AND THE PLACE YOU WORK IS THE  
11:10AM 7 COURTROOM, NOT YOUR LIVING ROOMS, KITCHENS, OR HOME OFFICES,  
11:10AM 8 WHICH OF COURSE YOU DO THAT IN THE EVENINGS AND INTO THE WEE  
11:10AM 9 HOURS OF THE NIGHT, I RECOGNIZE THAT.

11:10AM 10 BUT THE PLACE YOU DO YOUR BUSINESS IS IN THE COURTROOM,  
11:10AM 11 AND ALL OF YOU HAVE GREAT FLUENCY FOR THE COURTROOM, AND SO I  
11:10AM 12 AGREE. I HOPE THAT WE CAN OPEN OUR COURTROOMS SOON, AND WE ALL  
11:10AM 13 CAN ENJOY EACH OTHER'S COMPANY.

11:10AM 14 WE'RE WORKING ON WHAT WE NEED TO DO TO ESTABLISH VIDEO  
11:10AM 15 CONFERENCING IN THE INTERIM, AND SO IF WE NEED IT, HOPEFULLY  
11:10AM 16 WE'LL HAVE SOMETHING SET UP FOR FUTURE STATUS CONFERENCES IF WE  
11:10AM 17 CAN.

11:10AM 18 ALSO, AS TO ANY OTHER MATTERS, AS YOU POINT OUT, MR. WADE,  
11:10AM 19 MS. KRATZMANN WILL BE ABLE TO COMMUNICATE ANY OTHER SCHEDULE  
11:11AM 20 CHANGES FOR ANY OTHER MATTERS AS THEY NEED TO COME UP, AND I  
11:11AM 21 DON'T KNOW IF THAT ANSWERS YOUR QUESTION. I HOPE IT DOES.

11:11AM 22 MR. WADE: IT DOES. THANK YOU, YOUR HONOR.

11:11AM 23 THE COURT: ALL RIGHT. ANYTHING ELSE THAT EITHER  
11:11AM 24 SIDE WISHES TO RAISE AT THIS TIME?

11:11AM 25 MR. LEACH, ANYTHING FROM THE GOVERNMENT'S TEAM?

11:11AM 1 MR. LEACH: YOUR HONOR, IN LIGHT OF THE CHANGE OF  
11:11AM 2 THE TRIAL DATE FROM OCTOBER -- WELL, FROM THE END OF JULY TO  
11:11AM 3 OCTOBER 27TH, 2020, I THINK IT WOULD BE APPROPRIATE FOR THE  
11:11AM 4 COURT TO EXCLUDE TIME FOR EFFECTIVE PREPARATION IN LIGHT OF THE  
11:11AM 5 COVID CRISIS AND EVERYTHING THAT MR. WADE HAS DESCRIBED.

11:11AM 6 THE COURT: THANK YOU. I WAS GOING TO TURN TO  
11:11AM 7 MR. WADE WHEN HIS COMMENTS -- DURING HIS COMMENTS AND ASK HIM  
11:11AM 8 IF HE AGREES THAT TIME SHOULD BE EXCLUDED FOR EFFECTIVE  
11:11AM 9 PREPARATION OF COUNSEL TO THE NEW TRIAL OF OCTOBER 26TH, 2020.

11:12AM 10 MR. WADE?

11:12AM 11 MR. WADE: YOUR HONOR, WE DO. I BELIEVE IT ALSO MAY  
11:12AM 12 BE COVERED BY ONE OF THE COURT'S GENERAL ORDERS AS WELL, BUT IN  
11:12AM 13 ANY EVENT, WE DO AGREE.

11:12AM 14 THE COURT: ALL RIGHT. THANK YOU THEN.

11:12AM 15 ANYTHING FURTHER FROM YOU, MR. WADE, AND YOUR TEAM?

11:12AM 16 MR. WADE: NOT AT THIS TIME, YOUR HONOR. THANK YOU.

11:12AM 17 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. THANK  
11:12AM 18 YOU ALL FOR YOUR ATTENTION HERE. WE WILL -- AND LET ME SAY, IF  
11:12AM 19 EITHER PARTY WISHES TO HAVE ANOTHER STATUS OR A STATUS  
11:12AM 20 CONFERENCE OR BRING ANYTHING TO THE COURT'S ATTENTION, PLEASE  
11:12AM 21 FEEL FREE TO DO SO.

11:12AM 22 I'VE SET THE JULY 20TH DATE AS THE CALENDARED STATUS DATE  
11:12AM 23 SO WE ALL HAVE AN EVENT HORIZON TO FOCUS ON. BUT SHOULD THE  
11:12AM 24 NEED ARISE OR A CHANGE OR SOMETHING HAPPENS, PLEASE CONTACT  
11:12AM 25 MS. KRATZMANN, AND WE WILL OF COURSE ENGAGE THE STATUS OR OTHER

11:12AM 1 HEARING AS NEEDED IF THE PARTIES REQUIRE.

11:12AM 2 ALL RIGHT. THANK YOU. LET ME THANK YOU ALL AGAIN. IT'S  
11:12AM 3 GOOD TO HEAR YOUR VOICES. I LOOK FORWARD TO THE OPPORTUNITY  
11:13AM 4 WHEN I CAN SEE YOUR FACES PERSONALLY AND WE CAN INVITE YOU BACK  
11:13AM 5 TO A SAFE COURTROOM AND I CAN ENJOY YOUR COMPANY AND ALL OF  
11:13AM 6 YOUR ASSISTANCE IN THIS INTERESTING CASE.

11:13AM 7 PLEASE BE SAFE, YOU AND YOUR FAMILIES. I WISH YOU THE  
11:13AM 8 BEST AND PLEASE BE SAFE AND WELL, AND WE'LL TALK AGAIN SOON.

11:13AM 9 ANYTHING FURTHER, MS. KRATZMANN?

11:13AM 10 THE CLERK: NO, YOUR HONOR. THANK YOU.

11:13AM 11 THE COURT: ALL RIGHT. THANK YOU. WE'LL DISENGAGE  
11:13AM 12 THE LINE NOW. THANK YOU, COUNSEL.

11:13AM 13 MR. WADE: THANK YOU, YOUR HONOR.

11:13AM 14 MR. LEACH: THANK YOU VERY MUCH, YOUR HONOR.

11:13AM 15 (TELEPHONIC COURT CONCLUDED AT 11:13 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: JULY 20, 2020

# EXHIBIT F

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 ) CR-18-00258-EJD  
 PLAINTIFF, )  
 ) SAN JOSE, CALIFORNIA  
 VS. )  
 ) JULY 20, 2020  
 ELIZABETH A. HOLMES AND RAMESH )  
 SUNNY BALWANI, ) PAGES 1 - 95  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

TRANSCRIPT OF ZOOM PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S BY ZOOM:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN C. BOSTIC  
JEFFREY B. SCHENK  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH  
VANESSA BAEHR-JONES  
1301 CLAY STREET, SUITE 340S  
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S BY ZOOM: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP  
BY: KEVIN M. DOWNEY  
LANCE A. WADE  
PATRICK J. LOOBY  
KATHERINE A. TREFZ  
AMY M. SAHARIA  
725 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE  
BY: JOHN D. CLINE  
ONE EMBARCADERO CENTER, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94111

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP  
BY: JEFFREY COOPERSMITH  
AMANDA MCDOWELL  
701 FIFTH AVENUE, SUITE 5600  
SEATTLE, WASHINGTON 98104  
  
BY: STEPHEN A. CAZARES  
77 SOUTH FIGUEROA STREET, SUITE 3200  
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA

JULY 20, 2020

2 P R O C E E D I N G S

10:27AM 3 (COURT CONVENED AT 10:27 A.M.)

10:27AM 4 THE COURT: THANK YOU. GOOD MORNING EVERYONE.

10:27AM 5 THANK YOU ALL FOR YOUR PATIENCE IN MANEUVERING WITH OUR

10:27AM 6 TECHNOLOGY HERE. WE, OF COURSE, ARE IN THE BREAD BASKET OF

10:27AM 7 SILICON VALLEY AND OF COURSE EVERYTHING WORKED CORRECTLY THIS

10:27AM 8 MORNING. IT'S GOOD TO SEE EVERYONE.

10:27AM 9 LET ME START OFF AND WHY DON'T WE CAPTURE APPEARANCES OF

10:27AM 10 EVERYONE. THIS IS 18-258, UNITED STATES VERSUS

10:27AM 11 ELIZABETH HOLMES AND UNITED STATES VERSUS RAMESH "SUNNY"

10:27AM 12 BALWANI.

10:27AM 13 WHY DON'T WE START WITH THE GOVERNMENT. WHO APPEARS FOR

10:27AM 14 THE GOVERNMENT TODAY?

10:27AM 15 MR. LEACH: GOOD MORNING, YOUR HONOR.

10:27AM 16 THIS IS ROBERT LEACH ON BEHALF OF THE UNITED STATES, AND

10:28AM 17 JEFF SCHENK, JOHN BOSTIC, AND VANESSA BAEHR-JONES.

10:28AM 18 THE COURT: THANK YOU. I'M GOING TO ASK YOU TO MOVE

10:28AM 19 YOUR MICROPHONE CLOSER TO YOU, PLEASE.

10:28AM 20 MR. LEACH: IS THAT BETTER?

10:28AM 21 THE COURT: YES, MUCH BETTER. THANK YOU.

10:28AM 22 AND LET'S TURN THEN TO MS. HOLMES.

10:28AM 23 MR. WADE: GOOD MORNING, YOUR HONOR.

10:28AM 24 LANCE WADE ON BEHALF OF MS. HOLMES WHO IS PRESENT WITH ME

10:28AM 25 THIS MORNING, AND I'LL NOTE FOR THE RECORD ALSO ABLE TO



10:28AM 1 COMMUNICATE WITH US SEPARATELY VIA TELEPHONE IF WE NEED TO  
10:28AM 2 CONFER WITH HER PRIVATELY. SHE IS IN A DIFFERENT LOCATION.

10:28AM 3 MY COLLEAGUES KEVIN DOWNEY, AMY SAHARIA, AND KATIE TREFZ  
10:28AM 4 ARE WITH ME, AS IS MR. PATRICK LOOBY WHO I THINK HAS PROBABLY  
10:28AM 5 BEEN BEHIND US BEFORE, YOUR HONOR, BUT THIS IS THE FIRST TIME  
10:28AM 6 APPEARING BEFORE YOU, SO I'D LIKE TO INTRODUCE YOU TO  
10:28AM 7 MR. LOOBY.

10:28AM 8 THE COURT: THANK YOU. GOOD MORNING, MR. LOOBY.  
10:29AM 9 THANK YOU ALL FOR BEING HERE.

10:29AM 10 MR. WADE, LET ME JUST ASK YOU, SIR, THE COVID CRISIS HAS  
10:29AM 11 CAUSED US TO ENGAGE VIDEO CONFERENCING PROCEEDINGS FOR VARIOUS  
10:29AM 12 HEARINGS IN LIGHT OF THE COURT'S DESIRE TO MITIGATE APPEARANCE  
10:29AM 13 IN THE COURTROOMS FOR PUBLIC SAFETY AS WELL AS ALL OF YOUR  
10:29AM 14 SAFETY.

10:29AM 15 DO I HAVE YOUR CLIENT'S CONSENT TO PARTICIPATE IN THIS  
10:29AM 16 HEARING VIA VIDEO CONFERENCE?

10:29AM 17 MR. WADE: YOU DO, YOUR HONOR.

10:29AM 18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.  
10:29AM 19 THANK YOU, MS. HOLMES.

10:29AM 20 LET ME TURN TO MR. BALWANI THEN. IF I COULD GET THE  
10:29AM 21 APPEARANCES FOR MR. BALWANI.

10:29AM 22 MR. COOPERSMITH: YES. GOOD MORNING, YOUR HONOR.

10:29AM 23 THIS IS JEFF COOPERSMITH ON BEHALF OF MR. BALWANI FROM  
10:29AM 24 ORRICK, HERRINGTON & SUTCLIFFE.

10:29AM 25 MR. BALWANI IS ALSO PRESENT ON THE ZOOM.

1 GOVERNMENT IS GOING TO BE REQUIRED TO PRODUCE SOME ADDITIONAL  
2 FOUNDATIONAL INFORMATION AND BACKGROUND ON SOME OF THIS  
3 TESTIMONY.

4 BUT AGAIN, WE'RE GUIDED BY MS. SAHARIA'S REVELATION THAT  
5 THERE WILL BE ADDITIONAL LITIGATION ON THE SECOND SUPERSEDING  
6 INDICTMENT AND THAT MIGHT DRIVE SOME OF THE THOUGHTS THAT WE  
7 HAVE HERE NOW THAT MS. BAEHR-JONES AND HER TEAM HAS INFORMED US  
8 THAT SOME OF THIS CONDUCT THAT APPEARS IN THE SECOND  
9 SUPERSEDING INDICTMENT IS ACTUALLY SOME OF THE 404(B) EVIDENCE.

10 SO WHERE DOES THAT LEAVE US THEN, MR. LEACH? WHAT ELSE  
11 SHOULD WE TALK ABOUT?

12 MR. LEACH: YOUR HONOR, WE'RE ALSO SET FOR A STATUS  
13 CONFERENCE TODAY ON THE OCTOBER 27TH TRIAL DATE.

14 I WILL SAY FROM THE GOVERNMENT'S PERSPECTIVE WE ARE READY  
15 FOR TRIAL. WE HAVE SERVED OUR WITNESS LISTS ON JUNE 26TH. WE  
16 ALSO SERVED OUR EXHIBIT LIST ON THE SAME DAY. WE SERVED A  
17 NUMBER OF TRIAL SUBPOENAS AND INSTRUCTED WITNESSES TO HOLD THE  
18 OCTOBER DATE.

19 I WOULD NOTE MS. HOLMES HAS PRODUCED SOME OF HER RULE 16  
20 DISCOVERY. SO WE ARE READY TO GO.

21 I BELIEVE THE DEFENSE HAS SOME PERSPECTIVE ON THIS, AND I  
22 THINK IT MIGHT BE APPROPRIATE TO HEAR FROM THEM ABOUT SOME OF  
23 THE CHALLENGES THAT THEY SAY.

24 BUT FROM OUR PERSPECTIVE WE ARE READY TO GO AND WE'RE  
25 READY TO ENGAGE ON WHATEVER DIALOGUE THE COURT WISHES TO HAVE

11:54AM 1 ABOUT THE SPECIAL CIRCUMSTANCES COVID BRINGS IN THIS CASE OR  
11:54AM 2 MIGHT BRING.

11:54AM 3 BUT, YOU KNOW, FROM THE GOVERNMENT'S PERSPECTIVE WE'RE  
11:54AM 4 READY AND WE'RE ANXIOUS FOR THE TRIAL.

11:54AM 5 THE COURT: OKAY. THANK YOU. I APPRECIATE THAT.

11:54AM 6 WHAT ARE YOUR THOUGHTS ABOUT, AND OF COURSE THE DEFENSE  
11:54AM 7 WILL DIRECT THIS, BUT WHAT ARE YOUR THOUGHTS ABOUT ADDITIONAL  
11:54AM 8 MOTION PRACTICE THAT MS. SAHARIA HAS INFORMED US ABOUT TODAY?  
11:54AM 9 ORDER THAT THEY FILE ANY MOTION TOMORROW AT NOON?

11:54AM 10 MR. LEACH: I WOULD BE WILLING TO GIVE THEM A LITTLE  
11:54AM 11 BIT MORE TIME ON THAT, YOUR HONOR. I'M NOT SURE EXACTLY OF THE  
11:54AM 12 PARAMETERS ON WHAT THEY INTEND TO MOVE ON. I CAN ANTICIPATE  
11:54AM 13 SOME OF THEM, BUT I DON'T THINK THAT WE NEED AN EXTENDED  
11:55AM 14 BRIEFING SCHEDULE.

11:55AM 15 I THINK THE GOVERNMENT WOULD PROBABLY LIKE TWO TO THREE  
11:55AM 16 WEEKS TO RESPOND, BUT I THINK WE SHOULD GET A DATE ON CALENDAR  
11:55AM 17 FOR THAT.

11:55AM 18 BUT WE HAVE A SENSE, BASED ON SOME OF THE COMMENTS TODAY,  
11:55AM 19 WHAT THEY INTEND TO RAISE. WE'LL RESPOND IN OUR OPPOSITION.

11:55AM 20 BUT I THINK THAT WOULD BE A GOOD THING FOR THE COURT TO  
11:55AM 21 DO.

11:55AM 22 THE COURT: OKAY. THANK YOU.

11:55AM 23 MR. WADE? MS. SAHARIA? MR. DOWNEY?

11:55AM 24 MR. WADE: IT'S MR. WADE, YOUR HONOR. THANK YOU.

11:55AM 25 I THINK THERE ARE A COUPLE OF ISSUES TO ADDRESS HERE. ONE

11:55AM 1 RELATES TO THE MOTIONS AS YOU'VE REFERENCED, BUT REALLY I THINK  
11:55AM 2 THAT'S PUTTING THE CART A LITTLE BIT BEFORE THE HORSE.

11:55AM 3 I THINK ONE OF THE PURPOSES OF THE STATUS CONFERENCE WAS  
11:55AM 4 TO CHECK IN ON THE TRIAL DATE. I THINK WHEN WE SET THE TRIAL  
11:55AM 5 DATE FOR OCTOBER THE COURT PRUDENTLY SUGGESTED THAT WE HAVE A  
11:55AM 6 STATUS CONFERENCE ABOUT THREE MONTHS OUT SO THAT WE COULD CHECK  
11:55AM 7 AND SEE WHERE WE ARE FROM A PUBLIC HEALTH STANDPOINT.

11:55AM 8 I THINK AT THAT TIME, WHICH SEEMS LIKE A YEAR AGO, BUT IT  
11:56AM 9 WAS JUST A COUPLE MONTHS AGO, I THINK WE WERE ALL OPTIMISTIC ON  
11:56AM 10 OUR ABILITY TO MOVE FORWARD.

11:56AM 11 WE CERTAINLY, AS THE COURT CAN TELL FROM THESE MOTIONS,  
11:56AM 12 HAVE BEEN WORKING VERY HARD WITH -- AS THE GOVERNMENT HAS AS  
11:56AM 13 WELL, TO TRY TO CONTINUE TO SHARPEN THE ISSUES AND TRY TO  
11:56AM 14 PROCEED TO A POSITION WHERE WE WOULD BE READY TO TRY THE CASE.

11:56AM 15 WE WERE ALSO OPTIMISTIC, I WOULD SAY, ABOUT THE ABILITY OF  
11:56AM 16 OUR EXPERTS IN THE PUBLIC HEALTH FIELD AND OUR LEADERSHIP IN  
11:56AM 17 THE COUNTRY TO BE ABLE TO ADDRESS THIS PUBLIC HEALTH CRISIS IN  
11:56AM 18 A WAY THAT MIGHT MAKE THAT POSSIBLE.

11:56AM 19 I THINK THE COURT HAS ALWAYS EXPRESSED GREAT CARE AS IT  
11:56AM 20 RELATES TO PUBLIC HEALTH ISSUES AND WITH RESPECT TO OUR  
11:56AM 21 CLIENT'S CONSTITUTIONAL RIGHTS, AND WE'RE VERY APPRECIATIVE OF  
11:57AM 22 THAT.

11:57AM 23 I THINK WE ALL WANT A TRIAL HERE THAT IS SAFE FOR ALL  
11:57AM 24 TRIAL PARTICIPANTS FROM A PUBLIC HEALTH STANDPOINT BUT ALSO  
11:57AM 25 SAFE FROM A CONSTITUTIONAL STANDPOINT WHERE OUR CLIENT HAS ALL

1 OF THE RIGHTS THAT SHE'S ENTITLED TO GIVEN THAT HER LIBERTY IS  
2 IN JEOPARDY.

3 THERE ARE A COUPLE OF FACTORS ABOUT THIS CASE THAT MAKE  
4 PROCEEDING TO TRIAL UNIQUELY DIFFICULT ANY TIME SOON.

5 FIRST, OBVIOUSLY THIS IS NOT A TYPICAL ONE WEEK OR EVEN  
6 TWO WEEK TRIAL. THIS IS SET TO BE A VERY LENGTHY TRIAL.

7 EVEN AFTER THE CASE WAS SEVERED, I THINK THE COURT KNOWS  
8 THE GOVERNMENT HAS INDICATED THAT IT INTENDS TO PROCEED WITH  
9 THE SAME LENGTH OF CASE AND IT INTENDS TO CALL THE SAME NUMBER  
10 OF WITNESSES, INDEED THE SUPERSEDING INDICTMENT EXPANDED THE  
11 CASE SIGNIFICANTLY.

12 AS A RESULT OF THAT WE'RE LOOKING AT A THREE MONTH TRIAL,  
13 PERHAPS MORE, TO MOVE THIS CASE FORWARD TO COMPLETION.

14 OBVIOUSLY ALONG WITH A TRIAL OF THAT LENGTH, PROCEEDING IN  
15 THE MIDST OF A PANDEMIC COME GREAT RISKS. THERE ARE -- WE WILL  
16 ALL -- THERE WILL BE 30 TRIAL PARTICIPANTS WHO WILL BE IN AN  
17 INDOOR CONFINED SPACE WHICH THE CDC AND OTHER PUBLIC HEALTH  
18 EXPERTS TELL US IT IS NOT ADVISABLE UNDER CURRENT CONDITIONS.

19 EVEN IF MASKED, EVEN IF DISTANCED, ISSUES RAISE OTHER  
20 POTENTIAL CONCERNS AS IT RELATES TO OUR CLIENT'S CONSTITUTIONAL  
21 RIGHTS.

22 JUST A TRIAL FOR THAT LENGTH OF TIME PRESENTS UNIQUE  
23 OBSTACLES.

24 OBVIOUSLY WHAT COMES -- WHAT DRIVES THAT AMOUNT OF TIME  
25 ARE THE NUMBER OF WITNESSES THAT WOULD BE CALLED AT TRIAL. THE

11:59AM 1 GOVERNMENT HAS IDENTIFIED A WITNESS LIST, HAS DISCLOSED A  
11:59AM 2 WITNESS LIST TO THE DEFENSE IN THIS CASE RECENTLY. IT  
11:59AM 3 IDENTIFIES, IF YOU INCLUDE DOCUMENT CUSTODIANS, 170 WITNESSES.

11:59AM 4 THOSE WITNESSES COME FROM AT LEAST 15 DIFFERENT STATES,  
11:59AM 5 INCLUDING MANY THAT ARE HOT SPOTS SUCH AS ARIZONA WHERE THERE  
11:59AM 6 ARE 20 WITNESSES, TEXAS, GEORGIA, FLORIDA, AND ALL DIFFERENT  
11:59AM 7 PARTS OF CALIFORNIA.

11:59AM 8 CDC GUIDANCE WOULD SUGGEST THAT IF ANY WITNESS WERE TO FLY  
11:59AM 9 TO CALIFORNIA TO TESTIFY AT TRIAL, THEY SHOULD FIRST QUARANTINE  
11:59AM 10 THEMSELVES FOR 14 DAYS BEFORE THEY EXPOSED THEMSELVES TO OTHERS  
12:00PM 11 GIVEN THAT THEY'RE COMING FROM A PLACE WHERE THERE ARE A GREAT  
12:00PM 12 NUMBER OF INFECTIONS.

12:00PM 13 HOW THAT IS PRUDENT -- THAT IS NOT PRUDENT.

12:00PM 14 SIMILARLY, I THINK THE COURT KNOWS BETTER THAN I DO  
12:00PM 15 BECAUSE YOU ARE OBVIOUSLY LIVING THERE, THAT CALIFORNIA IS  
12:00PM 16 EXPERIENCING A PARTICULARLY DIFFICULT PERIOD. THE PANDEMIC  
12:00PM 17 THERE STATISTICALLY HAS GOTTEN WORSE, NOT BETTER, SINCE IT  
12:00PM 18 BEGAN.

12:00PM 19 THREE OF THE FOUR COUNTIES THAT PROVIDE JURORS THAT WOULD  
12:00PM 20 SERVE IN A JURY POOL HERE ARE ON THE GOVERNOR'S MONITORING  
12:00PM 21 LIST. MANY ARE ROLLING BACK SOME OF THE OPENING MEASURES THAT  
12:00PM 22 THEY HAD TAKEN INITIALLY EARLY ON AND ARE GOING IN THE WRONG  
12:00PM 23 DIRECTION, AND MANY OF THE SCHOOL DISTRICTS FROM WHERE WE WOULD  
12:00PM 24 DRAW JURORS ARE NOT GOING TO HAVE KIDS IN SCHOOL.

12:01PM 25 THE ABILITY TO GET AN IMPARTIAL JURY IN THIS SETTING FOR A

1 TRIAL OF THIS LENGTH IS DOUBTFUL. IT AT LEAST PRESENTS A LOT  
2 OF LEGAL ISSUES THAT WOULD BE CHALLENGING.

3 AT MORE BASIC LEVEL, YOUR HONOR, AS WE THINK THROUGH THESE  
4 STEPS AND WE THINK ABOUT THE WAYS IN WHICH THIS TRIAL MIGHT  
5 PROCEED OVER THREE MONTHS, WHAT HAPPENS IF A MONTH AND A HALF  
6 IN I WAKE UP WITH A SORE THROAT? WHAT HAPPENS IF ONE OF THE  
7 JURORS DOES OR THE COURT OR A MEMBER OF THE COURT STAFF? DO WE  
8 ADJOURN COURT FOR THE DAY? DO WE QUARANTINE FOR 14 DAYS? DO  
9 WE QUARANTINE UNTIL WE GET A TEST RESULT? THESE ARE  
10 CHALLENGING ISSUES.

11 I KNOW THAT THESE ARE ISSUES THAT ARE NOT UNIQUE TO THIS  
12 CASE. I KNOW THAT THESE ARE ISSUES THAT THE COURT IS  
13 STRUGGLING WITH IN MANY CASES, AND IT IS HAVING TO BALANCE  
14 THOSE INTERESTS AND THOSE CONCERNS AGAINST OTHER CONSTITUTIONAL  
15 RIGHTS SUCH AS DEMANDS FOR SPEEDY TRIAL, SITUATIONS IN WHICH  
16 DEFENDANTS ARE IN CUSTODY, AND WE KNOW THAT THE COURT IS  
17 LABORING TO DO THAT.

18 WE'VE WATCHED SOME OF THE PROCEEDINGS BEFORE OTHER COURTS  
19 IN THIS DISTRICT. WE ADMIRE, FRANKLY, THE BRAVERY WITH WHICH  
20 MANY OF THE TRIAL PARTICIPANTS ARE PROCEEDING THERE RECOGNIZING  
21 THAT THEY'RE AT RISK.

22 BUT THE PROCEEDINGS THAT WE HAVE SEEN SO FAR ARE SHORT IN  
23 NATURE. THEY DON'T INVOLVE -- THEY HAVEN'T INVOLVED TRIALS  
24 THAT ARE NATIONAL IN SCOPE WITH WITNESSES SCATTERED ACROSS THE  
25 UNITED STATES.

12:02PM 1 SO WE HAVE UNIQUE FACTORS HERE THAT MAKE OUR OBSTACLES  
12:02PM 2 RATHER EXTRAORDINARY.

12:02PM 3 AS THE COURT LIKELY KNOWS, IN ADDITION TO THE WORSENING  
12:03PM 4 PUBLIC HEALTH CRISIS, WE ALSO HAVE PREDICTIONS FROM SOME OF THE  
12:03PM 5 LEADING HEALTH EXPERTS IN THE FIELD, DR. FAUCI, DR. REDFIELD OF  
12:03PM 6 THE CDC, THAT SUGGEST THAT THINGS COULD WELL GET WORSE IN THE  
12:03PM 7 FALL AND WINTER AS A RESULT OF THE COMBINED EFFECT OF THE  
12:03PM 8 INFLUENZA AND COVID-19 PANDEMIC. THEY PREDICT THAT WE COULD  
12:03PM 9 SEE NUMBERS AND CONDITIONS THAT ARE FAR WORSE.

12:03PM 10 WE WOULD SUGGEST TO THE COURT THAT WE RECOGNIZE THIS  
12:03PM 11 REALITY. THE GOVERNMENT HAS ALWAYS TALKED ABOUT THE IMPORTANCE  
12:03PM 12 OF TRYING TO FIND A DATE. THE GOVERNMENT HAS ALWAYS TALKED  
12:03PM 13 ABOUT THE IMPORTANCE OF TRYING TO BE REALISTIC ABOUT THAT, AND  
12:03PM 14 WE'VE AGREED AND WE'VE TRIED TO DO THAT, AND I KNOW THE COURT  
12:03PM 15 HAS, TOO.

12:03PM 16 WE THINK A TRIAL ANY TIME SOON IS JUST NOT REALISTIC.  
12:04PM 17 IT'S JUST NOT SAFE.

12:04PM 18 WE THINK WE SHOULD RECOGNIZE THAT, AND WE THINK WE SHOULD  
12:04PM 19 ADJOURN THE TRIAL UNTIL NEXT YEAR.

12:04PM 20 I WOULD SUGGEST MS. HOLMES TAKING THE SLOT THAT IS  
12:04PM 21 CURRENTLY RESERVED FOR MR. BALWANI IN HIS TRIAL IN APRIL OF  
12:04PM 22 NEXT YEAR WOULD BE PRUDENT. THAT WOULD GET US THROUGH THE COLD  
12:04PM 23 AND FLU SEASON. WE COULD HAVE A STATUS CONFERENCE A COUPLE  
12:04PM 24 MONTHS OUT WHERE WE WOULD AGAIN TALK ABOUT WHETHER PROCEEDING  
12:04PM 25 IS REALISTIC, WHETHER PROCEEDING WILL ENDANGER PEOPLE AND



12:04PM 1 ENDANGER WITNESSES OR OTHER TRIAL PARTICIPANTS.

12:04PM 2 AND IF WE DO THAT, WE CAN ALSO AVOID DANGERS AND  
12:04PM 3 COLLATERAL CONSEQUENCES THAT WILL COME FROM SERVING. GOING OUT  
12:04PM 4 AND SERVING A BUNCH OF TRIAL SUBPOENAS RIGHT NOW, THE COURT HAS  
12:04PM 5 MAYBE SEEN THAT IS NOT AN EVENT THAT IS VERY WELL RECEIVED BY  
12:05PM 6 WITNESSES IN THE PRESENT HEALTH SITUATION.

12:05PM 7 I'M SURE -- I KNOW THE COURT WAS WORKING FROM HOME FOR  
12:05PM 8 SOME TIME PERIOD. WHEN THERE'S A KNOCK AT THE DOOR IT'S EVEN  
12:05PM 9 SOMEWHAT UNSETTLING FOR A LOT OF PEOPLE THESE DAYS, AND WHEN  
12:05PM 10 IT'S A PROCESS SERVER IT'S PARTICULARLY UNSETTLING.

12:05PM 11 SO I APPRECIATE THAT THE COURT SET THIS STATUS CONFERENCE  
12:05PM 12 TO HAVE THIS DIALOGUE NOW, AND I APPRECIATE THE CARE THAT THE  
12:05PM 13 COURT HAS GIVEN TO THESE ISSUES, AND I THINK MOVING THE TRIAL  
12:05PM 14 DATE WOULD BE PRUDENT.

12:05PM 15 NOW, WE HAVE AND WE'VE TALKED BEFORE ABOUT MOMENTUM THAT  
12:05PM 16 WE HAVE IN THIS CASE IN TERMS OF MAKING PROGRESS AND MOVING IT  
12:05PM 17 TOWARD TRIAL. I'M CONFIDENT THAT WE'LL CONTINUE TO KEEP THAT  
12:05PM 18 MOMENTUM, AND THAT WE WILL ALL WORK HARD TO BE IN THE BEST  
12:05PM 19 POSSIBLE POSITION TO TRY THIS CASE IN AN ORDINARILY WAY BEFORE  
12:05PM 20 THE COURT WHEN WE ARE ABLE TO DO SO.

12:05PM 21 WITH RESPECT TO THESE OTHER DATES WITH THE MOTIONS, ET  
12:06PM 22 CETERA, I THINK WE SHOULD DO WHAT PARTIES DO AND ONCE WE GET  
12:06PM 23 SOME DIRECTION FROM THE COURT ON THE TRIAL DATE, WE SHOULD MEET  
12:06PM 24 AND CONFER WITH THE GOVERNMENT ABOUT THE REMAINING DATES AND  
12:06PM 25 COME UP WITH A PROPOSED SCHEDULE THAT WE HOPEFULLY AGREE ON AND

12:06PM 1 SUBMIT IT TO THE COURT AND SET A SCHEDULE THEREAFTER.

12:06PM 2 I WILL NOTE THAT ON THE MOTIONS TO DISMISS, WE ACTUALLY  
12:06PM 3 THINK THAT THEY ARE ACTUALLY MORE COMPLICATED THIS TIME THAN  
12:06PM 4 THEY WERE LAST TIME.

12:06PM 5 WE ANTICIPATE AND WE STARTED SOME WORK ON THEM IN  
12:06PM 6 ANTICIPATION THAT THIS INDICTMENT MIGHT COME, BUT WE ANTICIPATE  
12:06PM 7 THAT THERE COULD BE FIVE OR SIX MOTIONS TO DISMISS.

12:06PM 8 WE HEAR THE GOVERNMENT THAT THEY WILL WANT A FAIR AMOUNT  
12:06PM 9 OF TIME TO FILE OPPOSITIONS TO THAT, AND OBVIOUSLY THE COURT  
12:06PM 10 NEEDS TIME TO CONSIDER IT.

12:06PM 11 SO WE HAVE PLENTY OF WORK TO DO IN THE MEANTIME.

12:06PM 12 YOU KNOW, THIS INDICTMENT CAME OBVIOUSLY MANY YEARS INTO  
12:06PM 13 THE CASE WITH RESPECT TO EVENTS THAT HAVE BEEN, YOU KNOW, MANY,  
12:07PM 14 MANY YEARS AGO AND HAVE BEEN KNOWN TO THE GOVERNMENT FOR A LONG  
12:07PM 15 TIME. THEY HAVE A RIGHT TO PROCEED AS THEY HAVE, BUT IT DOES  
12:07PM 16 HAVE SOME EFFECT ON GIVING US A LITTLE MORE WORK TO DO.

12:07PM 17 THE COURT HAS MENTIONED SOME DISCLOSURES THAT MIGHT  
12:07PM 18 BENEFIT FROM SUPPLEMENTATION AS WELL AS A RESULT OF MAYBE  
12:07PM 19 ORDERS THAT ARE GOING TO COME FROM THE COURT AND AS A RESULT OF  
12:07PM 20 THE SUPERSEDING INDICTMENT. SO I THINK WE HAVE A LOT OF WORK  
12:07PM 21 TO DO.

12:07PM 22 I THINK WE'LL BE MORE THAN BUSY ENOUGH BETWEEN NOW AND  
12:07PM 23 APRIL, AND I WOULD ASK THAT THE COURT CONSIDER THIS REQUEST AND  
12:07PM 24 BE PREPARED TO ADDRESS ANY INQUIRIES THAT THE COURT MAY HAVE.

12:07PM 25 THE COURT: THANK YOU, MR. WADE.

12:07PM 1 MR. WADE, LET ME ASK YOU, I APPRECIATE YOU RECOGNIZING THE  
12:07PM 2 MOMENTUM AND THE MOMENTUM AND THE EFFORTS THAT BOTH SIDES AND  
12:07PM 3 YOUR TEAMS HAVE PUT IN THIS CASE.

12:07PM 4 YOU PROBABLY UNDERSTAND THE RETICENCE THAT I MIGHT HAVE TO  
12:08PM 5 TAKE THE FOOT OFF THE GAS PEDAL. THAT JUST MAKES THE FINISH  
12:08PM 6 LINE MORE OBSCURE AND ACTUALLY SOMETIMES INCREASES THE  
12:08PM 7 DISTANCE.

12:08PM 8 SO I'M CURIOUS IF WE CAN MAINTAIN MOMENTUM, IF THE COURT  
12:08PM 9 WERE NOT TODAY TO DISTURB THE TRIAL DATE, LEAVE THE TRIAL DATE  
12:08PM 10 IN PLACE. AND I RECOGNIZE AND WE ALL RECOGNIZE THAT THIS IS A  
12:08PM 11 DYNAMIC SITUATION, BUT IF THE COURT WERE TO LEAVE THE TRIAL  
12:08PM 12 DATE AS IS NOW, WHICH WOULD MANDATE THAT THE PARTIES CONTINUE  
12:08PM 13 THEIR BEST EFFORTS TO CAPTURE ALL OF THE LITIGATION THAT YOU  
12:08PM 14 FEEL IS NECESSARY WITH THAT OCTOBER 27TH TRIAL DATE, WOULD YOU  
12:08PM 15 BE ABLE TO DO THAT?

12:08PM 16 MR. WADE: I THINK WE WOULD HAVE A VERY DIFFICULT  
12:08PM 17 TIME WITH THE CURRENT INDICTMENT, YOUR HONOR, MOVING FORWARD IN  
12:08PM 18 OCTOBER. GIVEN THAT WE HAVE GOT A SUPERSEDING INDICTMENT THAT  
12:08PM 19 MY GUESS IS OUR CLIENT IS ABOUT TO BE ARRAIGNED ON MAYBE IN A  
12:09PM 20 FEW MINUTES HERE OR THE COURT WILL ENTER THE ORDER ON THE  
12:09PM 21 WAIVER OF ARRAIGNMENT. I THINK WE WILL HAVE A VERY, VERY  
12:09PM 22 DIFFICULT TIME.

12:09PM 23 WE STILL HAVE MANY OPEN ISSUES THAT THESE MOTIONS IDENTIFY  
12:09PM 24 SOME OF THEM. THERE ARE MANY MORE.

12:09PM 25 WE DIDN'T BRING THEM TO THE COURT IN CONNECTION WITH THIS

1 PROCEEDING BECAUSE WE'RE CONTINUING TO WORK WITH THE GOVERNMENT  
2 TO TRY TO RESOLVE THEM.

3 BUT I DO NOT THINK EVEN WITH -- IF WE DIDN'T HAVE THE  
4 PANDEMIC, THAT WE WOULD BE READY TO PROCEED GIVEN THE  
5 SUPERSEDING INDICTMENT IN OCTOBER.

6 SO WE WOULD BE BACK IN A SITUATION WHERE, AS THE COURT  
7 KNOWS, WE SUGGESTED PREVIOUSLY THAT THE APPROPRIATE DATE WOULD  
8 BE AFTER THE FIRST OF THE YEAR EVEN WITHOUT THE PANDEMIC.

9 SO -- AND I DON'T THINK, FRANKLY, THAT KEEPING THE DATE  
10 AND NOT TAKING SOME RELIEF NOW IS JUST GOING TO MAKE -- PRESENT  
11 PROBLEMS AND, FRANKLY, SOME RISK FOR ALL BECAUSE IF THAT IS THE  
12 CASE, WE'RE GOING TO HAVE TO EMBARK UPON SERVING TRIAL  
13 SUBPOENAS ALMOST IMMEDIATELY, WE'RE GOING TO HAVE TO EMBARK  
14 UPON SOME OTHER TRIAL PREPARATION ACTIVITY THAT MIGHT REQUIRE  
15 TRAVEL AND THINGS THAT, FRANKLY, WE WOULD PREFER NOT TO DO IN  
16 THE CURRENT HEALTH ENVIRONMENT.

17 I RECOGNIZE THE COURT'S DESIRE TO MOVE FORWARD. I THINK  
18 THE COURT HAS GOTTEN A SENSE OF THE CANDOR WITH WHICH WE LIKE  
19 TO DEAL WITH THIS COURT IN EVERY ASPECT, AND I CAN TELL THE  
20 COURT WE WILL MOVE FORWARD AGGRESSIVELY WITH RESPECT TO  
21 EVERYTHING TO TRY TO MAKE PROGRESS AND GET THIS CASE READY.

22 YOU SAW MOTIONS THAT YOU REFERENCED AS MOTIONS THAT ARE  
23 MOTION IN LIMINE LIKE. THAT WAS BECAUSE WE RECOGNIZE THAT WE  
24 WANT TO CONTINUE TO DO WORK TO GET INTO A SITUATION WHERE THE  
25 ISSUES ARE RIPEN SO WE CAN PRESENT THEM TO THE COURT AND WE CAN

12:11PM 1 BE IN THE BEST POSSIBLE POSITION TO PROCEED TO TRIAL.

12:11PM 2 BUT I DON'T THINK REALISTICALLY IN THE CURRENT HEALTH  
12:11PM 3 ENVIRONMENT, WHICH HAS GOTTEN WORSE IN THESE MONTHS NOT BETTER,  
12:11PM 4 WHERE WE HAVEN'T HAD THE ABILITY TO MEET WITH OUR CLIENT IN  
12:11PM 5 MONTHS IN PERSON, WHERE WE DON'T HAVE THE ABILITY TO MEET WITH  
12:11PM 6 WITNESSES, WHERE WE DON'T HAVE THE ABILITY TO MEET IN PERSON  
12:11PM 7 WITH EXPERTS.

12:11PM 8 THERE'S A LOT THAT CAN BE DONE. THERE'S A LOT THAT WE  
12:11PM 9 HAVE DONE, BUT WE NEED LEAD TIME IN ADVANCE TO DO THAT. IF  
12:11PM 10 WE'RE FORCED TO DO IT, YOUR HONOR KNOWS WE WOULD DO IT, BUT IT  
12:11PM 11 ENDANGERS PEOPLE, AND WE WOULD PREFER THAT WE WOULD NOT BE PUT  
12:11PM 12 IN THAT CHOICE.

12:11PM 13 AND WE WOULD ASK THE COURT TO NOT PUT US IN THAT CHOICE.

12:11PM 14 THE COURT: ALL RIGHT. THANK YOU, MR. WADE.

12:11PM 15 LET ME JUST ASK YOU ABOUT A COUPLE OF OTHER JUST TRIAL  
12:11PM 16 PROTOCOLS. VIDEOTAPING WITNESSES, DEPOSITION TYPE WITNESSES  
12:11PM 17 THAT WOULD BE PRESERVED FOR TRIAL. I DON'T KNOW IF YOU'VE  
12:11PM 18 THOUGHT ABOUT THAT OR WHAT YOUR THOUGHTS ARE.

12:12PM 19 ALSO, I'M CURIOUS TO KNOW WHAT YOUR THOUGHTS ARE ABOUT  
12:12PM 20 PROCEEDINGS IN THE TRIAL BY VIDEO EITHER IN TOTAL OR PARTS OF  
12:12PM 21 IT, THAT IS, WITNESS TESTIMONY BEING CAPTURED BY A VIDEO AS  
12:12PM 22 OPPOSED TO IN PERSON.

12:12PM 23 I UNDERSTAND THERE ARE SOME CONFRONTATION ISSUES,  
12:12PM 24 CONSTITUTIONAL CONFRONTATION ISSUES THAT YOU MIGHT WANT TO  
12:12PM 25 SPEAK TO, BUT I'M JUST CURIOUS ABOUT YOUR THOUGHTS ON THAT.

12:12PM 1 MR. WADE: YOUR HONOR, THEY'RE VERY INTERESTING  
12:12PM 2 ISSUES AND RECOGNIZING THE COURT MAY RAISE THEM, I SPENT SOME  
12:12PM 3 TIME INVESTIGATING AND RESEARCHING PROCEEDINGS.

12:12PM 4 THERE ARE -- OBVIOUSLY, I KNOW YOU'RE AWARE OF THE TRIAL  
12:12PM 5 IN FRONT OF JUDGE ALSUP. THAT HAS PROCEEDED. THAT, OF COURSE,  
12:12PM 6 WAS A TRIAL WHERE THE DEFENDANT WAS IN CUSTODY. IT WAS IN THE  
12:12PM 7 MIDST OF TRIAL WHEN THE PANDEMIC STARTED, AND THE JURY WAS HELD  
12:12PM 8 OVER, AND THEN THERE THE PARTIES PROCEEDED VIA CONSENT.

12:13PM 9 BUT REGARDLESS, I TOOK IT AS AN OPPORTUNITY TO WATCH THAT  
12:13PM 10 PROCEEDING.

12:13PM 11 I ALSO RESEARCHED. THERE WAS A JURY TRIAL IN FLORIDA THAT  
12:13PM 12 HAPPENED ON A PILOT BASIS IN STATE COURT WITH RESPECT TO AN  
12:13PM 13 INSURANCE DISPUTE AND LOOKED AT THE FEEDBACK THAT LAWYERS ON  
12:13PM 14 BOTH SIDES PROVIDED THERE WITH RESPECT TO THE ISSUES.

12:13PM 15 AND I THINK SUFFICE IT TO SAY I DON'T THINK THAT WE WOULD  
12:13PM 16 BE COMFORTABLE PROCEEDING IN THAT MANNER IN A CASE LIKE THIS  
12:13PM 17 GIVEN THE LIMITATIONS THAT WOULD RESULT FROM IT.

12:13PM 18 THERE ARE A NUMBER OF ISSUES AT EACH STEP OF THE TRIAL, IF  
12:13PM 19 YOU CONSIDER JURY SELECTION ALL OF THE WAY THROUGH TO THE END,  
12:13PM 20 BUT CONFRONTATION RIGHTS ARE AMONG THE BIGGEST ISSUES.

12:13PM 21 BUT THE REAL ISSUE, YOUR HONOR, IS WE COULDN'T DO THE  
12:13PM 22 WHOLE THING REMOTELY.

12:13PM 23 AND SO IT DOESN'T REALLY SOLVE -- I DON'T THINK IT SOLVES  
12:13PM 24 THAT MUCH ANYWAY. WE CONFERRED WITH THE GOVERNMENT A BIT ON  
12:14PM 25 THIS, WE HAD SOME DIALOGUE ON THESE TOPICS, AND WE DID NOT SEE

12:14PM 1 A WORKABLE SOLUTION IN A CASE OF THIS SIZE.

12:14PM 2 NOW, I'M NOT SUGGESTING THAT'S NEVER WORKABLE. THERE  
12:14PM 3 COULD BE A CASE WHERE PARTIES CONSENT TO CERTAIN THINGS. THERE  
12:14PM 4 COULD BE A CASE WHERE OTHER RIGHTS LIKE SPEEDY TRIAL RIGHTS AND  
12:14PM 5 THE LIKE NEED TO BE BALANCED, BUT THIS ISN'T THAT CASE.

12:14PM 6 THIS IS A CASE WHERE WE'RE NOT ASSERTING -- DEMANDING A  
12:14PM 7 SPEEDY TRIAL. WE'RE WILLING TO WAIVE THAT RIGHT.

12:14PM 8 WE ARE -- OUR CLIENT IS NOT IN CUSTODY, AND THERE'S A  
12:14PM 9 SOLUTION TO THESE PROBLEMS. IT'S NOT ONE THAT HAS A LOT OF  
12:14PM 10 CURRENCY IN TODAY'S CLIMATE, BUT IT IS THERE NONETHELESS AND  
12:14PM 11 THAT IS A LITTLE BIT OF PATIENCE. WE THINK THAT WILL SOLVE  
12:14PM 12 THESE CHALLENGES.

12:14PM 13 THE COURT: THANK YOU. LET ME ASK YOU ABOUT DELAY  
12:14PM 14 SOMETIMES AFFECTS WITNESS'S AVAILABILITY, EITHER THEY LEAVE THE  
12:15PM 15 JURISDICTION OR HAVE PLANS TO MOVE, OR IN TODAY'S WORLD I DON'T  
12:15PM 16 KNOW WHAT THAT MEANS, BUT SOME PEOPLE ARE LEAVING THEIR CURRENT  
12:15PM 17 RESIDENCES FOR SAFER AREAS, AND THOSE AREAS MIGHT BE OUTSIDE OF  
12:15PM 18 THE JURISDICTION OF THE COURT OR MIGHT PRESENT ADDITIONAL  
12:15PM 19 PROBLEMS FOR GETTING A WITNESS TO COME BACK TO COURTS.

12:15PM 20 SOME WITNESSES MIGHT BECOME ILL SUCH THAT THEY'RE NOT  
12:15PM 21 AVAILABLE FOR COURT OR SOME OTHER TERRIBLE THING MIGHT HAPPEN  
12:15PM 22 IF WE DELAY. YOU KNOW, DELAY BRINGS THESE TYPES OF ISSUES.

12:15PM 23 ARE THERE ANY -- IS THERE ANY EVIDENCE THAT YOU THINK THAT  
12:15PM 24 MIGHT BE ABLE TO BE PRESERVED BY A DEPOSITION OR FOR A SPECIFIC  
12:15PM 25 WITNESS BECAUSE THERE MIGHT BE A QUESTION ABOUT THE WITNESS'S

12:15PM 1 AVAILABILITY IN THE FUTURE? DO WE HAVE TO BE CONCERNED ABOUT  
12:16PM 2 THAT IN THIS CASE?

12:16PM 3 MR. WADE: YOUR HONOR, THAT CAN BE A CONCERN.  
12:16PM 4 OBVIOUSLY EVEN AT TIMES WITH THE THREE OR FOUR WEEK DELAY  
12:16PM 5 SOMETIMES CIRCUMSTANCES WITH WITNESSES CHANGE OR UNFORTUNATE  
12:16PM 6 THINGS CAN HAPPEN TO WITNESSES.

12:16PM 7 WE HAVE NOT SEEN ANY INDICATION OF THAT IN THIS CASE.

12:16PM 8 THE CIRCUMSTANCES YOU PRESENT, YOUR HONOR, WHERE PEOPLE  
12:16PM 9 ARE GOING TO DIFFERENT PLACES EVEN WITHIN THE COUNTRY BECAUSE  
12:16PM 10 OF THE CIRCUMSTANCES ACTUALLY IS ONE OF THE CHALLENGES WITH  
12:16PM 11 PROCEEDING TO TRIAL IN THIS ENVIRONMENT BECAUSE IT'S HARD TO  
12:16PM 12 LOCATE PEOPLE. IT'S HARD TO LOCATE WITNESSES RIGHT NOW.

12:16PM 13 SO CERTAINLY IF THE GOVERNMENT WERE TO THINK THAT WAS AN  
12:16PM 14 ISSUE AND THOUGHT THERE WAS A NEED TO PRESERVE TESTIMONY, THE  
12:16PM 15 GOVERNMENT COULD RAISE THAT ISSUE WITH US AND WE COULD MEET AND  
12:16PM 16 CONFER WITH THE GOVERNMENT AND CONSIDER THEIR REQUEST AND  
12:16PM 17 WHETHER WE WOULD CONSENT TO IT.

12:16PM 18 WE DON'T PRESENTLY SEE THE NEED ON BEHALF OF MS. HOLMES TO  
12:17PM 19 PRESERVE ANY TESTIMONY AT THIS TIME.

12:17PM 20 THE COURT: ALL RIGHT. I'M CURIOUS. DO YOU HAVE  
12:17PM 21 THE WITNESS LIST, THE GOVERNMENT'S WITNESS LIST?

12:17PM 22 MR. WADE: I DO.

12:17PM 23 THE COURT: AND I'LL TURN THIS TO MR. LEACH. THIS  
12:17PM 24 IS A QUESTION FOR HIM BECAUSE I'M JUST CURIOUS, MR. LEACH,  
12:17PM 25 WHETHER YOU HAVE CONCERNS ABOUT ANY WITNESS'S AVAILABILITY



12:17PM 1 EITHER BECAUSE OF GEOGRAPHIC REASONS OR PERHAPS HEALTH REASONS  
12:17PM 2 OR OTHER REASONS THAT MIGHT PRESENT?

12:17PM 3 MR. LEACH: YES. THANK YOU, YOUR HONOR.

12:17PM 4 IF I COULD RESPOND BRIEFLY TO SOME OF THE THINGS THAT  
12:17PM 5 MR. WADE IS RAISING BECAUSE I AGREE WITH MANY OF THE CHALLENGES  
12:17PM 6 MR. WADE IS PRESENTING.

12:17PM 7 BUT IN TERMS OF PRESERVING WITNESS TESTIMONY, I THINK IT'S  
12:17PM 8 A SMALL MINORITY OF WITNESSES THAT WOULD FALL INTO THE CATEGORY  
12:17PM 9 THAT THE COURT IS DESCRIBING. I THINK THERE ARE SOME WITNESSES  
12:18PM 10 WHO ARE OVER THE AGE OF 65 WHERE I DON'T HAVE ANY CURRENT  
12:18PM 11 REASON TO THINK THAT THEY WOULD BE UNAVAILABLE ON A PARTICULAR  
12:18PM 12 DATE, BUT IT'S SOMETHING THAT THE GOVERNMENT IS GIVING THOUGHT  
12:18PM 13 TO, BUT IT'S A SMALL NUMBER OF WITNESSES AND I DON'T THINK  
12:18PM 14 WOULD EXPEDITE THE TRIAL OR PRESENT SOME SPECIAL NEED FOR ONE  
12:18PM 15 DATE VERSUS ANOTHER.

12:18PM 16 AND CERTAINLY TO THE EXTENT THAT WE CAN REACH AGREEMENT  
12:18PM 17 WITH COUNSEL ON THAT, I THINK IT WOULD MEET THE STANDARD FOR A  
12:18PM 18 RULE 15 DEPOSITION, BUT I THINK FROM THE GOVERNMENT'S  
12:18PM 19 PERSPECTIVE THAT'S A SMALL CATEGORY OF WITNESSES AND IT RELATES  
12:18PM 20 MORE TO AGE THAN IT DOES TO A CONCERN THAT A WITNESS WOULD NOT  
12:18PM 21 BE IN A JURISDICTION WHERE WE COULD COMPEL THEIR ATTENDANCE  
12:18PM 22 WITH THE COURT.

12:18PM 23 MORE BROADLY, I THINK IT'S IMPORTANT TO EMPHASIZE I AGREE  
12:18PM 24 WITH SOME OF THE THINGS THAT MR. WADE IS SAYING. I THINK THE  
12:19PM 25 WORK THAT NEEDS TO BE DONE FOR THE TRIAL CAN BE DONE BETWEEN

12:19PM 1 NOW AND OCTOBER 28TH, BUT I WOULD PUSH BACK ON THE SOLUTION OF  
12:19PM 2 KEEPING THAT DATE WITH AN EYE TOWARDS IT IS JUST GOING TO BE  
12:19PM 3 MOVED. I THINK THAT'S WORSE FOR ALL OF THE PARTIES.

12:19PM 4 FROM THE GOVERNMENT'S PERSPECTIVE, WE'RE READY TO GO, AND  
12:19PM 5 IT'S IMPORTANT THAT THIS CASE GO EXPEDITIOUSLY. THE FRAUD HERE  
12:19PM 6 IS IN THE HUNDREDS OF MILLIONS OF DOLLARS. THERE ARE NUMEROUS  
12:19PM 7 VICTIMS ON THE PATIENT SIDE AND ON THE INVESTOR SIDE.

12:19PM 8 SO WE THINK IT'S IMPORTANT THAT IT GO EXPEDITIOUSLY.

12:19PM 9 BUT MANY OF THE CHALLENGES THAT MR. WADE IS MENTIONING ARE  
12:19PM 10 REAL CHALLENGES AND UNIQUE CHALLENGES TO THIS CASE.

12:19PM 11 FROM THE GOVERNMENT'S PERSPECTIVE AT LEAST 16 OF OUR  
12:19PM 12 WITNESSES ARE OVER THE AGE OF 65, WHICH IS ONE OF THE COVID  
12:20PM 13 RISK FACTORS. A LARGE MAJORITY OF THE WITNESSES, AS MR. WADE  
12:20PM 14 POINTS OUT, ARE FROM OUT OF TOWN. MANY OF THE WITNESSES ARE IN  
12:20PM 15 HOT SPOTS LIKE PHOENIX, TEXAS, AND FLORIDA, AND THE LENGTH OF  
12:20PM 16 THE TRIAL, I'M HOPEFUL TO BRING IT IN SHORTER THAN THE ESTIMATE  
12:20PM 17 THAT MR. WADE GAVE, BUT IT'S GOING TO BE LONGER THAN YOUR  
12:20PM 18 REGULAR TRIAL. AND THOSE ARE REAL CHALLENGES, AND WE AGREE  
12:20PM 19 THAT THOSE SHOULD BE TAKEN INTO ACCOUNT BY THE COURT.

12:20PM 20 I DO THINK APRIL OF 2021 IS TOO LONG. THAT'S NINE MONTHS  
12:20PM 21 AWAY. THAT'S A LONG TIME, AND FROM THE GOVERNMENT'S  
12:20PM 22 PERSPECTIVE, WE DON'T WANT TO RETAIN A DATE THAT WE DON'T THINK  
12:20PM 23 IS GOING TO STICK.

12:20PM 24 WE THINK IF THE COURT IS INCLINED TO MOVE THE TRIAL, IT  
12:20PM 25 SHOULD MOVE THE TRIAL TO FEBRUARY OF 2021 AND HAVE

MR. BALWANI'S TRIAL FOLLOW SHORTLY AFTER THAT IN MAY OF 2021.

BUT IF THERE'S A REQUEST TO CONTINUE THE TRIAL, AND THAT'S WHAT I HEARD FROM MR. WADE, I THINK IT'S INCUMBENT UPON ALL OF US TO TAKE THOSE CHALLENGES INTO ACCOUNT. THE GOVERNMENT IS READY TO GO AND WILL GO ON WHATEVER DATE THE COURT SETS, BUT IT SHOULD BE A REAL DATE, AND IT SHOULD BE A DATE WE'RE ALL GOING TO HOLD. AND IF THERE'S DOUBT ABOUT OCTOBER 27TH, I THINK THE PRUDENT THING IS TO SET THE DATE WE ALL THINK THAT WE CAN MEET, AND WE THINK IT'S EARLIER THAN APRIL.

THE COURT: THANK YOU, MR. LEACH.

LET ME JUST SAY, I APPRECIATE ALL OF YOUR CANDOR HERE. WE ALL ARE OF COMMON PURPOSE AND THAT IS TO GET THIS TRIAL ENGAGED AS SOON AS IT'S READY TO BE ENGAGED AND ENGAGED SUCH THAT THE DEFENDANT'S RIGHTS ARE PROTECTED, SHE AND HE, MR. BALWANI, RECEIVE A FAIR TRIAL, AND THE GOVERNMENT, AND THEY RECEIVE A FAIR TRIAL AND THAT IS CONSTITUTIONALLY APPROPRIATE.

THE COVID CRISIS HAS CERTAINLY INTERRUPTED THAT. LET ME SAY THAT THIS TRIAL IS A VERY, AS MR. LEACH POINTS OUT AND MR. WADE POINTS OUT, IT'S VERY IMPORTANT TO YOUR CLIENT, MR. WADE, IT'S VERY IMPORTANT TO THE INTEGRITY OF THE JUSTICE SYSTEM AND THE VICTIMS AS MR. LEACH TELLS US, BUT THE OVERLAY ON TOP OF ALL OF THIS, OF COURSE, IS THE PANDEMIC THAT HAS HIT OUR COUNTRY.

AND I'M SURE REGRETTABLY NOW MOST PEOPLE KNOW SOMEBODY WHO HAS PERSONAL CONTACT OR AT LEAST KNOWS SOMEBODY WHO HAS

12:22PM 1 REGRETTABLY HAD THE VIRUS, RECOVERED, AND SOME OF US  
12:22PM 2 REGRETTABLY MAY KNOW FOLKS WHO ARE NO LONGER WITH US BECAUSE OF  
12:22PM 3 THAT VIRUS. SO IT'S A REAL SHADOW THAT LOOMS OVER THE WORK  
12:23PM 4 THAT WE DO, IT LOOMS OVER THE COUNTRY THAT WE LOVE, AND WE ALL  
12:23PM 5 ARE TRYING TO DO OUR PART TO MAKE SURE THAT THE VIRUS DOESN'T  
12:23PM 6 SPREAD AND PROTECT OUR FAMILIES AND LOVED ONES, OUR NEIGHBORS,  
12:23PM 7 AND OUR COMMUNITIES. THAT'S REALLY OUR RESPONSIBILITY, ISN'T  
12:23PM 8 IT, TO OURSELVES AND TO OUR COMMUNITIES TO PROTECT OURSELVES IN  
12:23PM 9 THAT WAY.

12:23PM 10 THAT RESPONSIBILITY IS NOT LOST ON ME. AND I APPRECIATE  
12:23PM 11 THE CANDOR OF MR. WADE, MR. LEACH, AND YOUR TEAMS BECAUSE I  
12:23PM 12 KNOW YOU HAVE DISCUSSED THIS WITH ALL OF YOUR TEAMS, HOW BEST  
12:23PM 13 TO PROTECT THE PUBLIC, HOW TO PROTECT YOU, TO PROTECT MY STAFF,  
12:23PM 14 THANK YOU FOR RECOGNIZING THAT.

12:23PM 15 I'M IN THE COURTHOUSE NOW, AND I'M SITTING IN THE  
12:23PM 16 CEREMONIAL COURTROOM ALONE. I'M HERE BY WAY OF A LAPTOP, AND  
12:23PM 17 MY STAFF ARE REMOTE. I HAVE STAFF DOWN THE HALL IN MY  
12:23PM 18 CHAMBERS, BUT I SIT HERE ALONE.

12:23PM 19 AND I LOOK OUT AND I TRY TO ENVISION WHAT A JURY TRIAL FOR  
12:23PM 20 3 MONTHS WOULD LOOK LIKE HERE WITH POTENTIALLY MAYBE WE'LL HAVE  
12:24PM 21 17 JURORS, WON'T WE, 12 JURORS AND MAYBE 5 ALTERNATES. WE  
12:24PM 22 MIGHT NEED MORE ALTERNATES FOR A CASE LIKE THIS IF IT'S TRIED  
12:24PM 23 CONCURRENT WITH THE PANDEMIC. AND I LOOK OUT AND I TRY TO  
12:24PM 24 ENVISION HOW AND WHERE PEOPLE WOULD SIT. I TRY TO ENVISION  
12:24PM 25 WHERE THE JURY WOULD SIT SUCH THAT THEY CAN OBSERVE A WITNESS

12:24PM 1 TO MY LEFT HERE IN THIS COURTROOM AND CAPTURE AND MAKE THEIR  
12:24PM 2 DETERMINATIONS AS TO THE CREDIBILITY OF THAT PARTICULAR WITNESS  
12:24PM 3 WHEN THEY SIT IN, CONTINUING WITH THE BASEBALL ANALOGY, WITH  
12:24PM 4 THE CHEAP SEATS AND THEY'RE IN THE CORNER AS OPPOSED TO THE  
12:24PM 5 JURY BOX CLOSER TO THE WITNESS.

12:24PM 6 I DON'T KNOW WHAT IS THE CONSTITUTIONAL RAMIFICATION OF  
12:24PM 7 THAT. HOW DOES THE JUDGE, HOW DOES SHE KEEP TRACK OF ALL OF  
12:24PM 8 THE JURORS IN THE COURTROOM AND THEY'RE ALL FOLLOWING  
12:25PM 9 EVERYTHING THAT SHE EXPECTS THEM TO FOLLOW IN A COURTROOM?

12:25PM 10 IT CREATES -- THOSE ARE IS JUST SOME OF THE PROTOCOL  
12:25PM 11 CHALLENGES OF RUNNING THE COURT. BUT AGAIN, IT ALL GETS BACK  
12:25PM 12 TO SOMETHING THAT YOU ALL AGREE IN AND THAT IS THE HEALTH AND  
12:25PM 13 SAFETY OF OUR COMMUNITY.

12:25PM 14 I HAVE GREAT RETICENCE TO SUMMON MEMBERS OF THE COMMUNITY  
12:25PM 15 AND INVITE THEM TO SIT IN CONFINED AREAS FOR LENGTHY PERIODS OF  
12:25PM 16 TIME WHEN THERE IS A PANDEMIC THAT AFFECTS THEM, THEIR  
12:25PM 17 FAMILIES, AND WE HAVE NO VACCINE AS OF YET AND I KNOW PEOPLE  
12:25PM 18 ARE WORKING HARD ON THAT AS WELL.

12:25PM 19 SO THAT'S A GREAT CONCERN OF MINE. I APPRECIATE YOU  
12:25PM 20 RECOGNIZING THAT AS I THINK WE HAVE TALKED ABOUT PREVIOUSLY THE  
12:25PM 21 OCTOBER DATE MIGHT BE A LITTLE TOO AMBITIOUS FOR US.

12:25PM 22 BUT THEN WHAT DO WE DO NEXT? IDEALLY -- AND THIS IS ME  
12:26PM 23 SPEAKING SELFISHLY AS A JUDGE, IDEALLY WHAT WOULD HAPPEN IS ALL  
12:26PM 24 OF THE WORK GETS DONE. BUT IF WE FINISH THAT WORK, IF IT'S  
12:26PM 25 OCTOBER, IF IT'S NOVEMBER, IF IT'S DECEMBER, SOME TIME THIS

12:26PM 1 YEAR, AND THEN WHAT WE'RE DOING THEN IS THAT WE'RE WAITING,  
12:26PM 2 WE'RE WAITING FOR THE SAFE TIME. WE'RE NOT WAITING FOR WORK TO  
12:26PM 3 BE DONE BECAUSE THE WORK WOULD ALREADY BE DONE. ALL WE'RE  
12:26PM 4 WAITING FOR NEXT IS WHEN IS IT SAFE? WHEN IS IT SAFE TO HAVE  
12:26PM 5 THE COMMUNITY COME IN AND HEAR THIS CASE AND MAKE THE  
12:26PM 6 COMMUNITY'S DECISION ABOUT THIS CASE?

12:26PM 7 THAT'S THE IDEAL SITUATION THAT I WOULD LIKE TO PLACE  
12:26PM 8 OURSELVES IN. I'D LIKE TO ACCOMPLISH THAT, THAT IS, COMPLETE  
12:26PM 9 EVERYTHING THAT NEEDS TO GET DONE.

12:26PM 10 ONE WAY TO DO THAT IN A TIMELY MANNER IS, AS I'VE  
12:26PM 11 SUGGESTED TO I THINK MR. LEACH, MAYBE I'LL HAVE THE DEFENSE  
12:26PM 12 FILE ALL OF THEIR MOTIONS BY NOT NOON TOMORROW BUT 5:00 P.M.  
12:26PM 13 TOMORROW JUST TO GIVE THEM EXTRA TIME TO GET IT ALL DONE. WE  
12:27PM 14 CAN MOVE FORWARD IN SOME SCHEDULE LIKE THAT, BUT I'D LIKE TO  
12:27PM 15 ENGAGE A SCHEDULE THAT IS REALISTIC.

12:27PM 16 AND I KNOW THAT TRIALS ARE DYNAMIC ALSO, PARTICULARLY  
12:27PM 17 PRETRIAL. WE DON'T KNOW WHAT ELSE MAY COME UP. WE'VE HEARD  
12:27PM 18 THAT THERE MIGHT BE FIVE MOTIONS AS TO THE SUPERSEDING  
12:27PM 19 INDICTMENT. AND I KNOW THAT BRINGS GREAT JOY FOR MR. LEACH AND  
12:27PM 20 HIS TEAM TO HEAR, BUT THERE COULD BE EXTENSIVE LITIGATION  
12:27PM 21 COMING FORWARD ON THIS.

12:27PM 22 SO THAT INFORMS THE COURT ALSO THAT I NEED TO SET A  
12:27PM 23 SCHEDULE THAT IS APPROPRIATE IN THIS CASE.

12:27PM 24 LET ME -- I DO WANT TO TURN TO MR. COOPERSMITH AND GIVE  
12:27PM 25 YOU AN OPPORTUNITY TO BE HEARD ON THIS, SIR. ALTHOUGH I WILL

12:27PM 1 TELL YOU ONE THING THAT WE'LL NOT -- I'M NOT GOING TO DISTURB  
12:27PM 2 IS THE FACT THAT YOUR CASE, SIR, WILL TRAIL MS. HOLMES'S CASE.  
12:27PM 3 SO WHATEVER I DECIDE AS TO MS. HOLMES, YOU'LL BE THE SECONDARY  
12:28PM 4 AS FAR AS TRIAL DATES AS TO THAT. THE SUGGESTION I THINK FROM  
12:28PM 5 THE GOVERNMENT IS THAT ABOUT A THREE MONTH SCHEDULE AFTER THE  
12:28PM 6 TRIAL OF MS. HOLMES.

12:28PM 7 BUT, MR. COOPERSMITH, WHAT IS IT THAT YOU WOULD LIKE ME TO  
12:28PM 8 KNOW?

12:28PM 9 MR. COOPERSMITH: THANK YOU. SO ON THE ISSUE OF  
12:28PM 10 TRIAL, I DO UNDERSTAND THE COURT'S RULING. WE'LL PRESERVE OUR  
12:28PM 11 POSITION FOR THE RECORD THAT WE BELIEVE OUR TRIAL SHOULD HAVE  
12:28PM 12 GONE FIRST, BUT I WON'T SAY ANY MORE ON THAT. BUT I DO  
12:28PM 13 UNDERSTAND AND RESPECT THE COURT'S RULING.

12:28PM 14 WITH REGARD TO THE TRIAL DATE, I UNDERSTAND THAT WE HAVE A  
12:28PM 15 STATUS CONFERENCE ON AUGUST 31ST I BELIEVE IT'S SCHEDULED. SO  
12:28PM 16 I'M SURE IF THAT STANDS WE'LL BE TALKING MORE ABOUT THAT THEN.

12:28PM 17 FOR NOW, YOUR HONOR, UNFORTUNATELY EVERYTHING THAT  
12:28PM 18 MR. WADE SAID AND MR. LEACH SAID ABOUT THE COVID CRISIS AND  
12:28PM 19 YOUR HONOR SAID IS RIGHT. WE'RE SORT OF AT THE MERCY OF THOSE  
12:28PM 20 UNFORTUNATE CIRCUMSTANCES.

12:28PM 21 WE WOULD LIKE TO GET THIS CASE TRIED, TOO. MR. BALWANI  
12:28PM 22 HAS BEEN LIVING WITH THIS INVESTIGATION SINCE 2016. HE'S BEEN  
12:29PM 23 LIVING WITH THE INDICTMENT SINCE 2018. IT'S VERY UNFORTUNATE  
12:29PM 24 THAT THERE'S SUCH A DELAY IN JUSTICE.

12:29PM 25 BUT THAT SAID, WE, I THINK, UNFORTUNATELY ARE GOING TO

12:29PM 1 HAVE TO, GIVEN THE COURT'S POSITION OF THE ORDER OF TRIAL,  
12:29PM 2 AWAIT MS. HOLMES'S TRIAL. IF THE TRIAL REALLY TAKES THREE  
12:29PM 3 MONTHS, THEN WE'LL HAVE TO TRY THAT AT SOME POINT, AND WE'RE  
12:29PM 4 HAPPY TO RECONFER WITH THE GOVERNMENT ONCE THE HOLMES TRIAL IS  
12:29PM 5 SET ON WHAT EXACTLY THE SCHEDULE FOR MR. BALWANI SHOULD LOOK  
12:29PM 6 LIKE AND TALK ABOUT THAT WITH THE COURT MORE ON AUGUST 31ST IF  
12:29PM 7 THAT WORKS FOR YOU, YOUR HONOR.

12:29PM 8 THE COURT: ALL RIGHT. THANK YOU, MR. COOPERSMITH.  
12:29PM 9 I APPRECIATE THAT.

12:29PM 10 ANYONE ELSE FROM YOUR TEAM WISH TO BE HEARD?

12:29PM 11 MR. COOPERSMITH: NO, YOUR HONOR.

12:29PM 12 THE COURT: I SEE NO HANDS. ALL RIGHT. THANK YOU.

12:29PM 13 SO LET'S TALK THEN ABOUT AUGUST 31ST IS A STATUS DATE FOR  
12:29PM 14 MR. BALWANI. I'M CURIOUS IF I SHOULD NOW HAVE MS. HOLMES'S  
12:30PM 15 TEAM AND ALL YOU MEET AND CONFER ABOUT -- I APPRECIATE YOU  
12:30PM 16 GIVING ME THESE PARTICULAR DATES HERE.

12:30PM 17 IN LIGHT OF THE -- MS. HOLMES'S SUGGESTION ABOUT  
12:30PM 18 ADDITIONAL LITIGATION, I WOULD LIKE TO KNOW, TO THE EXTENT THAT  
12:30PM 19 YOU CAN, MR. WADE, AND I'M NOT ASKING YOU TO DISCLOSE ANYTHING  
12:30PM 20 THAT DISRUPT YOUR DEFENSE SCHEDULE OR ASK YOU TO TELL US WHAT  
12:30PM 21 YOUR DEFENSE IS, ANYTHING LIKE THAT, BUT I THINK IT IS  
12:30PM 22 APPROPRIATE FOR ME TO ASK YOU TO, NOT JUST TODAY TO RESPOND,  
12:30PM 23 BUT TO ASK YOU TO INFORM THE COURT AS TO POTENTIAL MOTIONS THAT  
12:30PM 24 YOU MIGHT HAVE AND FILE SUCH THAT THE GOVERNMENT CAN BE AWARE  
12:30PM 25 ALSO SO WE CAN ENGAGE A REALISTIC SCHEDULE FOR LITIGATING AND



1 HEARING THOSE MOTIONS SUCH THAT I CAN THEN BE MORE INFORMED TO  
2 GIVE US A BETTER DATE FOR TRIAL WHENEVER THAT IS.

3 ONE THING I'M CONCERNING DOING NOW IS NOT DISTURBING THE  
4 TRIAL DATE, AND THAT IS PRIMARILY JUST TO KEEP OUR EXCLUSION OF  
5 TIME IN EFFECT, BUT NOT DISTURBING ANY OF THE TRIAL DATES,  
6 HOWEVER, SCHEDULE A STATUS CONFERENCE AGAIN AT SOME POINT. IT  
7 MIGHT BE AUGUST 31ST. IT MIGHT BE BEFORE THAT.

8 BUT I'D LIKE THE PARTIES TO MEET AND CONFER TO DISCUSS  
9 ANOTHER, AND I'VE USED THIS PHRASE BEFORE IN THIS CASE, A  
10 REALISTIC SCHEDULE FOR MOTIONS.

11 NOW, I'D LIKE -- THE ADDITIONAL MOTIONS THAT YOU'VE TALKED  
12 ABOUT ARE IMPORTANT ONES. I DON'T KNOW WHETHER OR NOT, AND I'D  
13 LIKE YOUR OPINIONS ABOUT WHETHER OR NOT THOSE WOULD DISTURB ANY  
14 OF THE OTHER DECISIONS THAT THE COURT HAS MADE ON ANY EVIDENCE,  
15 NOT THAT WE'VE MADE MUCH, BUT I DON'T WANT TO, IF THE CASE IS  
16 CONTINUED INTO NEXT YEAR, I DON'T WANT TO START A COMPLETELY  
17 NEW SCHEDULE SUCH THAT WE LOSE ANY OF THE MOMENTUM THAT WE'VE  
18 CAPTURED, ANY OF THE WORK THAT YOU'VE DONE AND WE START OVER  
19 AGAIN. THAT DOESN'T ACCOMPLISH ANYTHING. I'M NOT INTERESTED  
20 IN THAT.

21 MR. WADE: NO. WE AGREE, YOUR HONOR. WE AGREE.

22 IF I COULD BE HEARD BRIEFLY ON YOUR COMMENTS?

23 THE COURT: SURE.

24 MR. WADE: WE DON'T INTEND TO FUNDAMENTALLY CHANGE  
25 THINGS. WE INTEND TO CONTINUE TO MOVE FORWARD. THE GOVERNMENT

12:32PM 1 HAS EXPANDED THE SCOPE OF THE CASE, AND THERE ARE A NUMBER OF  
12:32PM 2 THINGS THAT FLOW FROM THAT, AS WE TALKED ABOUT FOR MUCH OF THE  
12:32PM 3 ARGUMENT TODAY. OBVIOUSLY THOSE ARE THINGS THAT WE ARE GOING  
12:32PM 4 TO HAVE TO DEAL WITH.

12:32PM 5 WITH RESPECT TO THE MOTIONS, WE STARTED THE WORK ON THAT  
12:32PM 6 IN ANTICIPATION OF THIS, BUT OBVIOUSLY THERE IS MORE WORK TO BE  
12:32PM 7 DONE. WE DO THINK THAT ONE MOTION AT LEAST SORT OF AS A MATTER  
12:32PM 8 OF RECORD WOULD NEED TO REPRISE PRIOR MOTIONS TO MAKE SURE THAT  
12:32PM 9 OUR PRIOR ARGUMENTS APPLY TO THE NEW INDICTMENT AND THE PRIOR  
12:33PM 10 RULING APPLIES TO THE NEW INDICTMENT TO THE EXTENT THAT THE NEW  
12:33PM 11 INDICTMENT DOESN'T CHANGE THE NATURE OF THAT RULING.

12:33PM 12 AND THEN WE THINK THERE ARE SEVERAL ADDITIONAL MOTIONS,  
12:33PM 13 FOUR OR FIVE DIFFERENT MOTIONS TO DISMISS THE INDICTMENT. YOUR  
12:33PM 14 HONOR HAS HEARD ABOUT SOME OF THEM TODAY. OBVIOUSLY, THERE'S A  
12:33PM 15 STATUTE OF LIMITATIONS MOTION WITH RESPECT TO CERTAIN COUNTS,  
12:33PM 16 THERE WILL BE A NOTICE RELATED MOTION AND A FEW OTHER THINGS.

12:33PM 17 I THINK WHILE WE TRIED TO PREPARE, OUR ANTICIPATION WOULD  
12:33PM 18 BE THAT OUR HOPE IS WE GET THOSE IN FRONT OF THE COURT  
12:33PM 19 REASONABLY QUICKLY AND FIND A TIME WHEN THAT IS DONE AND THE  
12:33PM 20 GOVERNMENT WOULD HAVE AN APPROPRIATE AMOUNT OF TIME TO RESPOND,  
12:33PM 21 BUT I WOULD GUESS THAT WITHIN A MONTH WE COULD GET ALL OF THOSE  
12:33PM 22 MOTIONS ON FILE.

12:33PM 23 I THINK I HEARD MR. LEACH SAY HE WAS LOOKING FOR  
12:34PM 24 THREE WEEKS. HE MAY WANT A MONTH. I DON'T -- I WANT TO BE  
12:34PM 25 FAIR TO THE GOVERNMENT HONESTLY. AND FUNDAMENTALLY, I WANT TO

12:34PM 1 ACT CONSISTENT WITH THE DIRECTION PROVIDED BY THE COURT.

12:34PM 2 FRANKLY, WHILE WE ALWAYS ADHERE TO IT, I'M NOT SURE WE NEED IT

12:34PM 3 HERE. WE WANT TO MOVE THIS FORWARD. WE SHARE THAT DESIRE, BUT

12:34PM 4 WE SHARE THE CONCERNS THAT THE COURT -- THAT WE DISCUSSED

12:34PM 5 BEFORE AND THAT THE COURT IDENTIFIED.

12:34PM 6 SO I THINK IF MORE BROADLY WE WERE TO MEET AND CONFER,

12:34PM 7 RECOGNIZING THE COURT HASN'T FORMALLY MOVED THE TRIAL DATE BUT

12:34PM 8 IS INCLINED TO AFTER HEARING FROM THE COURT, FROM THE PARTIES

12:34PM 9 ON THE PARTICULARS, WE CAN CERTAINLY MEET AND CONFER WITH THE

12:34PM 10 GOVERNMENT AND FIND A TIME TO COME BACK IN FRONT OF THE COURT

12:34PM 11 IF NEED BE, OR IT MAY BE THAT WE CAN JUST AGREE TO A SCHEDULE

12:34PM 12 AND THE COURT CAN ORDER IT. WHATEVER THE COURT THINKS WILL

12:34PM 13 MAKE SENSE. BUT WE CAN CERTAINLY DO THAT WITHIN A WEEK OR TWO

12:34PM 14 I WOULD THINK IF THAT IS OF BENEFIT TO THE COURT.

12:34PM 15 THE COURT: THANK YOU.

12:35PM 16 MR. LEACH.

12:35PM 17 MR. LEACH: WE CERTAINLY CAN WORK WITH DEFENSE

12:35PM 18 COUNSEL ON AN APPROPRIATE SCHEDULE WITH THE OCTOBER DATE IN

12:35PM 19 MIND, YOUR HONOR.

12:35PM 20 I NEED TO EMPHASIZE, THOUGH, MUCH OF THE WORK FROM THE

12:35PM 21 GOVERNMENT'S PERSPECTIVE GOING FORWARD IS MEETING WITH

12:35PM 22 WITNESSES WHO WE HAVE SUBPOENAED, WHO WE HAVE TOLD BE READY IN

12:35PM 23 OCTOBER WHO ARE HOLDING THAT TIME AND WHO ARE MAKING

12:35PM 24 SUBSTANTIAL SACRIFICES IN ORDER TO, A, MEET WITH US, AND ALSO

12:35PM 25 HOLD THAT TIME FROM THEIR SCHEDULE.

12:35PM 1 AND SO IT'S NOT -- FROM THE GOVERNMENT'S PERSPECTIVE, IT'S  
12:35PM 2 DIFFICULT TO TURN THOSE THINGS ON A DIME. AND IF -- AS I'VE  
12:35PM 3 SAID IN MY EARLIER REMARKS, HOLDING A DATE FOR THE PURPOSE OF  
12:35PM 4 HOLDING A DATE POSES SOME GREAT DIFFICULTIES TO US IF EVERYBODY  
12:35PM 5 KNOWS THAT'S NOT GOING TO HAPPEN.

12:35PM 6 SO I THINK THE PRUDENT THING WE COULD DO IS SET THE  
12:35PM 7 SCHEDULE, WE CAN LITIGATE WHATEVER WE NEED TO LITIGATE THROUGH  
12:36PM 8 THAT, AND THEN HAVE THAT DATE CERTAIN IN MIND AND STICK TO IT.  
12:36PM 9 WE WOULD URGE THE COURT TO DO THAT, BUT WHATEVER DATE SET WE  
12:36PM 10 WILL MEET. THE GOVERNMENT WILL BE READY.

12:36PM 11 THE COURT: WELL, THANK YOU. I THINK IT'S FAIR TO  
12:36PM 12 SAY, MR. LEACH, AND I RECOGNIZE THE ISSUE THAT YOU HAVE TOLD  
12:36PM 13 YOUR CLIENTS -- EXCUSE ME, YOUR WITNESSES THAT THERE'S A DATE  
12:36PM 14 CERTAIN AND THE JUDGE WAS FIRM ON THAT, AND I WAS, AND COVID  
12:36PM 15 INTERRUPTED IT. I SUPPOSE THAT'S MY EXCUSE. BUT YOU CAN  
12:36PM 16 CERTAINLY POINT THE FINGER BACK TO THE JUDGE, AND I INVITE YOU  
12:36PM 17 TO DO THAT.

12:36PM 18 TO THE EXTENT THAT YOU NEED SOME RELIEF FROM THAT, YOU  
12:36PM 19 SHOULD RECOGNIZE -- LET ME JUST SAY THAT I INDICATED I WOULD  
12:36PM 20 LEAVE THE DATE. I'M NOT GOING TO DISTURB THE CURRENT TRIAL  
12:36PM 21 DATE. I'M DOING THAT TO, AS I SAID, TO KEEP THE TIME  
12:36PM 22 EXCLUSIONS IN PLACE AND ALL OF THE OTHER ISSUES REGARDING THAT  
12:36PM 23 IN PLACE.

12:36PM 24 WHAT I WILL TELL YOU IS THAT IT IS UNREALISTIC THAT WE ARE  
12:37PM 25 GOING TO GO TO TRIAL ON THAT DATE. IT'S JUST NOT GOING TO

12:37PM 1 HAPPEN.

12:37PM 2 SO IF THAT RELIEVES YOU FROM THOSE APPOINTMENTS YOU HAVE  
12:37PM 3 WITH WITNESSES, I HOPE THAT GIVES YOU AND THEM SOME REASSURANCE  
12:37PM 4 THAT THEY WON'T BE NEEDED FOR THAT TRIAL DATE.

12:37PM 5 THEN THEY'LL ASK YOU, OKAY, WHEN SHOULD WE RESCHEDULE?  
12:37PM 6 WHEN IS THE NEW DATE? THAT'S THE DATE THEN, AND I HEARD YOU  
12:37PM 7 ALL TELL ME YOUR OPINIONS, THE APRIL AND THE FEBRUARY DATE. I  
12:37PM 8 WOULD LIKE YOU TO GIVE ME SOME MORE INFORMATION ABOUT WHAT WORK  
12:37PM 9 THAT YOU WILL DO BETWEEN NOW AND THE EARLIER OF THOSE TRIAL  
12:37PM 10 DATES BEING FEBRUARY, WHAT YOUR SCHEDULE IS GOING TO BE TO  
12:37PM 11 ACCOMPLISH ALL OF THE MOTION PRACTICE THAT IS GOING TO BE  
12:37PM 12 NEEDED ON THE CHARGING DOCUMENT.

12:37PM 13 MY SENSE IS WHAT -- AS I SAID, WHAT I WOULD LIKE TO HAVE  
12:37PM 14 DONE, AND MY WISH LIST IS THAT WE HAVE ALL OF THE LITIGATION  
12:37PM 15 AND THE PRETRIAL LITIGATION AS TO CHARGING DOCUMENTS AND IF IT  
12:38PM 16 SURVIVES THAT, THERE IS A CASE THAT GOES FORWARD, WHATEVER THAT  
12:38PM 17 CASE IS, IT GOES FORWARD SUCH THAT ALL OF YOUR WITNESS  
12:38PM 18 PRODUCTION IS DONE. OF COURSE WE'VE TALKED ABOUT OTHER  
12:38PM 19 EXAMINATIONS THAT NEED TO BE ACCOMPLISHED AND THAT HAS TO --  
12:38PM 20 THAT SCHEDULING SHOULD GO FORWARD AS WELL AND ACCOMPLISH ALL OF  
12:38PM 21 THE WORK THAT NEEDS TO BE DONE THERE.

12:38PM 22 SO I'D LIKE YOU TO MEET AND CONFER AND TALK ABOUT ALL OF  
12:38PM 23 THOSE THINGS THAT YOU NEED TO ACCOMPLISH VIS-A-VIS AN EARLIER  
12:38PM 24 TRIAL DATE. I HEARD THE GOVERNMENT SAY FEBRUARY. YOU MIGHT  
12:38PM 25 WANT TO LOOK AT THAT DATE, THE EARLIER OF THOSE DATES, THAT IS,

12:38PM 1 THE FEBRUARY DATE AS OPPOSED TO THE APRIL, AND LOOK AND SEE IF  
12:38PM 2 THINGS CAN BE DONE BY FEBRUARY? DO YOU NEED TO GO INTO MARCH?  
12:38PM 3 DOES IT REALLY REQUIRE AN APRIL DATE?

12:38PM 4 ALL OF THIS, OF COURSE, IS GOING TO BE GUIDED, ISN'T IT,  
12:38PM 5 BY THE CLOUD OF COVID? I HOPE THESE GOOD SCIENTISTS, WHEREVER  
12:38PM 6 THEY'RE WORKING, I HOPE THEY'RE ABLE TO FIND A VACCINE FOR ALL  
12:39PM 7 OF US. THAT WOULD BE A MIRACLE, AND IT WOULD BE WELL RECEIVED  
12:39PM 8 BY THE PLANET.

12:39PM 9 BUT WE NEED TO -- IT'S SUCH A DYNAMIC CIRCUMSTANCE, WE  
12:39PM 10 NEED TO PREPARE FOR THE FACT THAT THERE IS THE SECOND WAVE.  
12:39PM 11 AND I HEARD THIS MORNING ON THE RADIO COMING IN WHEN DOES THE  
12:39PM 12 SECOND WAVE START IF WE'RE STILL IN A FIRST WAVE IN DECEMBER IN  
12:39PM 13 THE MIDDLE OF THE INFLUENZA SEASON? WE JUST DON'T KNOW THOSE  
12:39PM 14 THINGS, WE JUST DON'T. SO IT IS DYNAMIC IN THAT REGARD.

12:39PM 15 I'M HOPEFUL THAT WE CAN GET THE CASE TRIED IN Q1 OF NEXT  
12:39PM 16 YEAR. THAT WOULD BE MY GOAL. I THINK IT'S YOURS AS WELL.

12:39PM 17 BUT WHAT THAT EXACT DATE IS, I DON'T HAVE COMPLETE  
12:39PM 18 INFORMATION TO SET THAT DATE TODAY.

12:39PM 19 I APPRECIATE YOUR OFFERS OF THESE DATES, AND THEY MIGHT BE  
12:39PM 20 GOOD ONES, AND IT MIGHT BE -- IT MAY BE THAT THE APRIL DATE IS  
12:39PM 21 THE ONE, SINCE WE'VE SELECTED IT FOR MR. BALWANI, IT MIGHT BE  
12:39PM 22 EASY TO JUST SLIDE IN AND USE THAT.

12:39PM 23 BUT I APPRECIATE THE GOVERNMENT'S DESIRE TO GET THE CASE  
12:40PM 24 MOVING AND THEIR THOUGHT THAT WE CAN GET IT PERHAPS GOING  
12:40PM 25 BEFORE THEN RECOGNIZING THAT IN FEBRUARY WE WOULD HAVE TO SET

12:40PM 1 OUR OR WE WOULD LIKE TO SET OUR FINAL PRETRIAL CONFERENCE THAT  
12:40PM 2 WOULD BE SOME TIME IN JANUARY. I WOULD LIKE TO HAVE THAT ABOUT  
12:40PM 3 THREE OR FOUR WEEKS IN ADVANCE OF THE TRIAL DATE.

12:40PM 4 HERE WE MIGHT WANT TO DO IT A LITTLE MORE THAN THAT, JUST  
12:40PM 5 BECAUSE I THINK, AS WE EXPERIENCED TODAY, THE MOTIONS IN LIMINE  
12:40PM 6 WILL PROBABLY BE EXTENSIVE. I'M JUST GUESSING, BUT I THINK  
12:40PM 7 IT'S AN EDUCATED GUESS THAT WE'LL PROBABLY HAVE EXTENSIVE  
12:40PM 8 MOTION IN LIMINE PRACTICE HERE AS WELL THAT WILL OCCUPY SOME  
12:40PM 9 TIME.

12:40PM 10 SO HOW MUCH TIME DO YOU THINK THAT YOU WOULD NEED OR YOU  
12:40PM 11 WOULD LIKE, MR. LEACH, MR. WADE, TO MEET AND CONFER?

12:40PM 12 SHOULD I LEAVE THE AUGUST 31ST CONFERENCE DATE, STATUS  
12:40PM 13 DATE NOW AND USE THAT? OR SHOULD WE COME BACK BEFORE THEN?

12:41PM 14 MR. LEACH: YOUR HONOR, I THINK IT WOULD BE PRUDENT  
12:41PM 15 TO COME BACK BEFORE THEN JUST SO WE CAN REACH RESOLUTION ON  
12:41PM 16 THESE ISSUES.

12:41PM 17 THE COURT: SURE.

12:41PM 18 MR. LEACH: AND WE'LL -- SO I THINK A DATE IN EARLY  
12:41PM 19 AUGUST IS APPROPRIATE.

12:41PM 20 THE COURT: OKAY. MR. WADE, YOU'RE OKAY WITH THAT?

12:41PM 21 MR. WADE: I BELIEVE I AM, YOUR HONOR. MAYBE THE --

12:41PM 22 THE COURT: LET ME -- LET'S TURN TO MS. KRATZMANN,  
12:41PM 23 THE KEEPER OF ALL THINGS, AND ASK HER WHAT LOOKS GOOD FOR US.

12:41PM 24 MR. WADE: I'M USED TO SEEING THAT BIG CALENDAR UP  
12:41PM 25 ON THE WALL, YOUR HONOR. IT'S VERY DISORIENTING NOT TO HAVE

12:41PM 1 IT.

12:41PM 2 THE COURT: IT IS. IMAGINE HOW I FEEL? I'M SITTING  
12:41PM 3 HERE ALONE WITH A LAPTOP, A PENCIL, AND A PAD, AND THERE IS NO  
12:41PM 4 CALENDAR, AND THERE'S NOBODY TO TURN TO.

12:41PM 5 (LAUGHTER.)

12:41PM 6 THE CLERK: YOUR HONOR, MIGHT I SUGGEST AUGUST 10TH  
12:41PM 7 AT 10:00 A.M.

12:42PM 8 THE COURT: IS THAT A MONDAY?

12:42PM 9 THE CLERK: THAT IS A MONDAY, YOUR HONOR.

12:42PM 10 THE COURT: IT IS A MONDAY.

12:42PM 11 DOES THAT WORK FOR THE PARTIES?

12:42PM 12 MR. WADE: YOUR HONOR, I HAPPEN TO HAVE A CONFLICT  
12:42PM 13 ON THAT DATE. IS IT POSSIBLE THAT WE CAN DO EITHER THE 3RD OR  
12:42PM 14 THE 17TH?

12:42PM 15 THE COURT: LET'S SEE. MS. KRATZMANN, WE CAN DO A  
12:42PM 16 DATE OTHER THAN A MONDAY IF NEED BE. WE CAN SPECIAL SET THIS.

12:42PM 17 THE CLERK: WE COULD, YOUR HONOR.

12:42PM 18 IS THE WEEK OF THE 10TH NOT AVAILABLE FOR COUNSEL? WE  
12:42PM 19 COULD DO AUGUST 11TH OR 12TH.

12:42PM 20 MR. WADE: YOUR HONOR, MIGHT I ASK IF WE MIGHT JUST  
12:42PM 21 CONFER WITH COLLEAGUES AND CIRCLE BACK WITH MS. KRATZMANN --

12:42PM 22 THE COURT: YES.

12:42PM 23 MR. WADE: -- TO MAKE SURE WE FIND A DATE? IT'S A  
12:42PM 24 LITTLE HARD TO DO. NORMALLY WE WOULD BE WHISPERING IN EACH  
12:42PM 25 OTHER'S EARS RIGHT NOW, AND IT'S A LITTLE DIFFICULT TO DO THAT.



12:43PM 1 SO MAYBE WE CAN DO THAT AND CONFER WITH THE GOVERNMENT AND  
12:43PM 2 COME UP WITH A DATE IN THAT WINDOW.

12:43PM 3 THE COURT: RIGHT. WELL, LET ME DO THIS. THEN I  
12:43PM 4 WON'T DISTURB THE TRIAL DATE NOW JUST FOR PURPOSES OF OBSERVING  
12:43PM 5 THE TRIAL EXCLUSION.

12:43PM 6 I AM GOING TO -- YOU UNDERSTAND, MR. LEACH, YOU'RE  
12:43PM 7 RELIEVED FROM -- THERE'S NOT GOING TO BE ANY WITNESSES THAT  
12:43PM 8 DATE, AND YOU DON'T NEED TO GO FORWARD WITH ANY OF THAT WORK  
12:43PM 9 THAT YOU TOLD ME ABOUT.

12:43PM 10 MR. LEACH: UNDERSTOOD, YOUR HONOR. JUST SO I'M  
12:43PM 11 CLEAR, I BLAME MYSELF FOR THAT, NOT THE COURT, WHEN I'M DEALING  
12:43PM 12 WITH WITNESSES. SO PLEASE DON'T WORRY ABOUT THAT.

12:43PM 13 THE COURT: OKAY.

12:43PM 14 BUT WHAT I WILL DO IS HAVE YOU MEET AND CONFER AND GET  
12:43PM 15 BACK TO MS. KRATZMANN AS TO A DATE THAT YOU THINK IS  
12:43PM 16 APPROPRIATE FOR OUR FURTHER STATUS CONFERENCE IN RE TRIAL DATE.  
12:43PM 17 AND WHAT I'D LIKE YOU TO DO IS TO TALK ABOUT, TO THE EXTENT  
12:43PM 18 THAT YOU CAN, THE ADDITIONAL MOTION PRACTICE THAT NEEDS TO BE  
12:43PM 19 DONE, ANY OTHER MOTIONS AND ANY OTHER -- ANYTHING THAT YOU  
12:44PM 20 THINK WOULD CONSUME SOME TIME SUCH THAT WE CAN SET, SO THE  
12:44PM 21 COURT CAN SET A REALISTIC TRIAL DATE AT LEAST ON OUR END FOR  
12:44PM 22 NEXT YEAR, AND WE'LL SET THAT DATE. IT DOESN'T HAVE TO BE ON A  
12:44PM 23 MONDAY.

12:44PM 24 MS. KRATZMANN CAN TALK WITH YOU ABOUT SPECIAL SETTING  
12:44PM 25 SOMETHING, AND IT WILL BE A ZOOM HEARING AGAIN FOR THAT

12:44PM 1 PURPOSE.

12:44PM 2 AND THEN WE'LL LEAVE MR. BALWANI'S AUGUST 31ST DATE  
12:44PM 3 UNDISTURBED, WE'LL LEAVE THAT STATUS DATE UNDISTURBED NOW AND  
12:44PM 4 ANY TIME EXCLUSIONS WE'LL CONTINUE TO THAT DATE.

12:44PM 5 ANY OBJECTION TO THAT, MR. COOPERSMITH?

12:44PM 6 MR. COOPERSMITH: YOUR HONOR, NO OBJECTION TO AN  
12:44PM 7 AUGUST 31ST STATUS CONFERENCE THAT IS ALREADY ON CALENDAR.

12:44PM 8 THE ONE THING I WOULD LIKE TO CLARIFY WITH YOUR HONOR IS  
12:44PM 9 ON THE MEET AND CONFER THAT YOUR HONOR HAS DIRECTED REGARDING  
12:45PM 10 THE TRIAL DATE FOR MS. HOLMES'S TRIAL AND THE MOTIONS PRACTICE,  
12:45PM 11 DOES THE COURT ENVISION THAT WE WOULD BE A PART OF THAT? WE  
12:45PM 12 CERTAINLY WOULD LIKE TO BE BECAUSE, ONE, THE TRIAL DATE FOR  
12:45PM 13 MS. HOLMES OBVIOUSLY DIRECTLY AFFECTS US AND IT'S DISCONCERTING  
12:45PM 14 TO JUST BE PRESENTED WITH SOMETHING AS A FAIT ACCOMPLI WITHOUT  
12:45PM 15 HAVING HAD ANY INPUT.

12:45PM 16 AND THEN SECOND, ON SOME, ALTHOUGH PERHAPS NOT ALL, OF THE  
12:45PM 17 MOTIONS WE FEEL LIKE WHATEVER RULING IS MADE FROM AN  
12:45PM 18 EVIDENTIARY STANDPOINT AND SO FORTH DOES HAVE AN IMPACT ON US  
12:45PM 19 AS WELL FOR THE SECOND TRIAL.

12:45PM 20 SO WE WOULD LIKE TO BE, AND I'M HOPING THE COURT ENVISIONS  
12:45PM 21 WE WOULD BE PART OF THAT MEET AND CONFER PROCESS EVEN THOUGH  
12:45PM 22 OUR STATUS CONFERENCE REMAINS ON AUGUST 31ST.

12:45PM 23 THE COURT: MR. LEACH?

12:45PM 24 MR. LEACH: I HAVE NO OBJECTION, YOUR HONOR.

12:45PM 25 THE COURT: OKAY. SO I KNOW YOU'VE ALL SEEN THE

12:45PM 1 PLAY "HAMILTON," MR. COOPERSMITH. SO IT APPEARS THAT MR. LEACH  
12:45PM 2 IS GOING TO ALLOW YOU IN THE ROOM I THINK IS THE SONG.

12:45PM 3 ALL RIGHT. YOU CAN BE PART OF THAT, AND TO THE EXTENT  
12:46PM 4 THAT YOU CAN HAVE SOME ASSISTANCE FOR EFFICIENCY OF DATES, THAT  
12:46PM 5 WOULD BE HELPFUL. THANK YOU.

12:46PM 6 BUT YOUR STATUS DATE, MR. COOPERSMITH, INCLUDING ANY TIME  
12:46PM 7 EXCLUSION, AND YOU HAVE NO OBJECTION TO EXCLUDING TIME FOR YOUR  
12:46PM 8 CLIENT TO ALLOW YOU TO EFFECTIVELY -- CONTINUE TO EFFECTIVELY  
12:46PM 9 PREPARE.

12:46PM 10 MR. COOPERSMITH: THAT'S CORRECT, YOUR HONOR.

12:46PM 11 THE COURT: ALL RIGHT. THANK YOU. WE'LL NOTE THAT  
12:46PM 12 TIME EXCLUSION.

12:46PM 13 AND THEN I'LL WAIT TO HEAR FROM YOU, MS. KRATZMANN WILL  
12:46PM 14 HEAR FROM YOU, AND THEN WE'LL SCHEDULE THE NEXT STATUS  
12:46PM 15 CONFERENCE ACCORDINGLY.

12:46PM 16 AS TO THE MOTIONS THEMSELVES THAT ARE ON THE TABLE TODAY,  
12:46PM 17 I ALSO WANT YOU, IN YOUR MEET AND CONFER, I THINK IT WOULD BE  
12:46PM 18 HELPFUL -- I'M GOING TO TAKE THEM UNDER SUBMISSION, BUT I THINK  
12:46PM 19 IT WOULD BE HELPFUL ALSO AND WHEN WE NEXT GET TOGETHER FOR YOU  
12:46PM 20 TO TELL ME NOT JUST THE DATES AND THE WORK THAT YOU THINK NEEDS  
12:46PM 21 TO BE DONE, BUT ALSO THE EFFECT OF THOSE MOTIONS AND ANY OTHER  
12:46PM 22 ADDITIONAL MOTION PRACTICE THAT YOU THINK MIGHT HAVE BEARING ON  
12:47PM 23 THE COURT'S RULINGS ON THESE MOTIONS AND WHY OR HOW THE COURT  
12:47PM 24 SHOULD RULE ON THESE PARTICULAR MOTIONS.

12:47PM 25 DO YOU UNDERSTAND THAT QUESTION, MR. WADE?

12:47PM 1 MR. WADE: I DO, YOUR HONOR.

12:47PM 2 THE COURT: MR. LEACH?

12:47PM 3 MR. LEACH: I DO, YOUR HONOR. THANK YOU,  
12:47PM 4 YOUR HONOR.

12:47PM 5 THE COURT: I THINK I'VE GIVEN YOU SOME HINTS ABOUT  
12:47PM 6 AT LEAST SOME OF THE GOVERNMENT -- AND THIS REALLY IS RELATED  
12:47PM 7 TO THE GOVERNMENT'S INFORMATION REGARDING THE GOVERNMENT'S  
12:47PM 8 EXPERTS AND THINGS.

12:47PM 9 AS I SAID, I EXPECT THAT I'LL -- AND THE GOVERNMENT SHOULD  
12:47PM 10 EXPECT THAT THE COURT WOULD WANT SOME ADDITIONAL FOUNDATIONAL  
12:47PM 11 AS TO SOME OF THESE WITNESSES IF THEY MOVE FROM -- WHAT IS IT?  
12:47PM 12 -- PERCIPIENT OBSERVATION TO MORE OF THE 702 TYPE THAT WE'VE  
12:47PM 13 TALKED ABOUT, AND I THINK IT RELATES TO THOSE SIX WITNESSES  
12:47PM 14 THAT WE TALKED ABOUT EARLIER, THE DOCTORS AND THE OTHERS.

12:47PM 15 OKAY. ANYTHING FURTHER BEFORE WE CONCLUDE TODAY'S HEARING  
12:47PM 16 OTHER THAN ME WISHING YOU WELL AND THAT YOU AND YOUR FAMILIES  
12:48PM 17 REMAIN SAFE. IT'S ALWAYS A PLEASURE TO SEE ALL OF YOU. I  
12:48PM 18 APPRECIATE THAT.

12:48PM 19 ANYTHING FURTHER?

12:48PM 20 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.  
12:48PM 21 THANK YOU VERY MUCH FOR THE TIME AND THE COURT'S COMMENTS.

12:48PM 22 THE COURT: THANK YOU.

12:48PM 23 MR. WADE?

12:48PM 24 MR. WADE: NOTHING FURTHER FROM MS. HOLMES,  
12:48PM 25 YOUR HONOR. WE, TOO, WE WISH THE SAME TO THE COURT, AND WE

12:48PM 1 APPRECIATE THE COURT'S COMMENTS, AND I HOPE EVERYONE CONTINUES  
12:48PM 2 TO BE SAFE, YOU AND ALL OF YOUR STAFF.

12:48PM 3 THE COURT: THANK YOU VERY MUCH.

12:48PM 4 MR. COOPERSMITH: NOTHING FURTHER FROM MR. BALWANI.

12:48PM 5 AND, OF COURSE, WE ECHO THOSE COMMENTS AS WELL. THANK YOU.

12:48PM 6 THE COURT: THANK YOU. WE'LL SEE YOU SOON. WE'LL  
12:48PM 7 END THIS ZOOM CONFERENCE NOW.

12:48PM 8 THANK YOU, MS. KRATZMANN.

12:48PM 9 THE CLERK: COURT IS ADJOURNED.

12:48PM 10 (COURT CONCLUDED AT 12:48 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: JULY 21, 2020

# EXHIBIT G

**From:** Jack Lord  
**To:** Donald Lucas  
**Sent:** 9/22/2013 6:24:06 PM  
**Subject:** Re: Checking in

I am just boarding a flight to Dallas - land 630 eastern

Sent from my iPhone

> On Sep 22, 2013, at 2:18 PM, Donald Lucas <[REDACTED]> wrote:

>

> Yes done. What time zone are you in. Just landed at JFK

>

> Don Lucas

> Lucas Venture Group

> 545 Middlefield Road: USA

> O: (650) [REDACTED]

> C: (650) [REDACTED]

>

>

>> On Sep 22, 2013, at 2:16 PM, "Jack Lord" <[REDACTED]> wrote:

>>

>> Thanks Don - what are best times and number for a call?

>> Also please pass on note about K-1 to someone in your office

>>

>> Sent from my iPhone

>>

>>> On Sep 22, 2013, at 2:12 PM, Donald Lucas <[REDACTED]> wrote:

>>>

>>> All good Jon. I am investing \$20 million into a company you should be interested in. Eric Topol has tweeted a lot about it. Theranos. It is a deal my dad was Chairman of until his Alzheimer's. I was given the opportunity by Elizabeth, the founder and CEO as a continuation of his legacy. She also asked me to work with her as an advisor to the company. They do not need any money they have been cash flow positive since 2006. World changer. Revolutionary. I am buying stock at a price set in 2011 which was \$6 billion. Trust me, you probably just spit up your vodka, it is a deal.

>>> Just arriving in NYC for meeting with ceo of JDRF and global head of research. Short fuse here. Have to close by September 30th.

>>> Very confidential. My dad's group/ side of the family does not know that I am involved.

>>> Wwww.theranos.com.

>>> Or lucasventuregroup. Com

>>>

>>> Call me if you are serious can tell more.

>>> Best regards

>>> Don

>>>

>>> Don Lucas

>>> Lucas Venture Group

>>> 545 Middlefield Road: USA

>>> O: (650) [REDACTED]

>>> C: (650) [REDACTED]

>>>

>>>

>>>> On Sep 22, 2013, at 7:35 AM, "Jonathan Lord" <[REDACTED]> wrote:

>>>>

>>>> Hope all is well Don - keep up with the family through Facebook

>>>> What's new on your end?

>>>> Also - we are hunting down the K-1's for this year so we can close out taxes - please advise

>>>> Cheers

>>>> J